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DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Numbers EERE–2013–BT–STD–0007 and EERE–2013–BT–STD–0021]

RIN 1904–AC95 and 1904–AD11

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Small, Large, and Very Large Air-Cooled Commercial Package Air-Conditioning and Heating Equipment and Commercial Warm Air Furnaces; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical correction.

SUMMARY: On January 15, 2016, the U.S. Department of Energy (DOE) published a direct final rule in the **Federal Register** that amended the energy conservation standards for small, large, and very large air-cooled commercial package air conditioning and heating equipment and commercial warm air furnaces. This document corrects multiple editorial errors in that final rule.

DATES: *Effective:* August 15, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 286–1692. Email: *John.Cymbalsky@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 15, 2016, DOE's Office of Energy Efficiency and Renewable Energy published an energy conservation standards direct final rule (DFR) in the **Federal Register** titled, "Energy Conservation Standards for Small, Large, and Very Large Air-Cooled Commercial Package Air-Conditioning and Heating Equipment and Commercial Warm Air Furnaces" ("January 2016 DFR"). 81 FR 2420. Since the publication of that DFR, it has come to DOE's attention that, due to a technical oversight, certain portions of the regulatory text adopted in the January 2016 DFR for 10 CFR part 431 contained editorial errors.

As part of that DFR, DOE amended 10 CFR 431.97, which addresses energy conservation standards for commercial air conditioners and heat pumps. This correction addresses editorial errors in § 431.97(b) through (d). When DOE renumbered the tables in § 431.97(b), subsequent tables in that section were correctly renumbered, but all cross-references to those tables were not properly amended. In addition, when amending paragraph (c) in regards to table numbering, DOE inadvertently reverted to the introductory text from an earlier version of the CFR, prior to the effective dates of the July 21, 2015 and September 21, 2015 final rule and correction for energy conservation standards for packaged terminal air conditioners and heat pumps. 80 FR 43162; 80 FR 56894. In amending paragraph (b), DOE inadvertently removed a footnote to Table 2 that was established in the July 17, 2015, final rule regarding energy conservation standards and test procedures for commercial heating, air-conditioning, and water heating equipment. 80 FR 42614. Finally, in amending paragraph (b) to establish separate equipment classes for double-duct equipment (in Tables 5 and 6), DOE inadvertently omitted references to this equipment in one table heading (Table 1) and in one table (Table 6). In order to remedy these errors, DOE is issuing this technical correction. In some cases, DOE has removed the incorrect cross-references entirely, as the text is sufficiently clear without them.

II. Need for Correction

As published, the adopted energy conservation standards text may potentially result in confusion regarding which standards apply to which equipment.

Because this technical correction document would simply correct errors in the regulatory text without making substantive changes to the energy conservation standards, the changes addressed in this document are technical in nature. Accordingly, DOE finds that there is good cause under 5 U.S.C. 553(b)(B) to not issue a separate notice to solicit public comment on the changes contained in this document. Issuing a separate notice to solicit public comment would be impracticable, unnecessary, and contrary to the public interest.

III. Procedural Requirements

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the January 2016 DFR remain unchanged for this technical correction. These determinations are set forth in the January 15, 2016 final rule. 81 FR 2420.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

Issued in Washington, DC, on August 5, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends part 431 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 431.97 is amended:
■ a. In paragraph (b):
■ i. By revising the undesignated text after the Table 1 heading;
■ ii. In Table 2, the fourth column, last row remove "October 29, 2003." and add in its place "October 29, 2003.³";
■ iii. By adding note 3 to Table 2;
■ iv. In Table 6, in the first column, by adding ", Double-Duct" after each instance of "(Air-Cooled";

■ b. In paragraph (c), in note 2 to Table 7, by removing "Table 6" and adding in its place "Table 8";

■ c. By revising paragraph (c) introductory text, excluding Tables 7 and 8;

■ d. In paragraph (d)(1) by removing "Table 7 of";

■ e. In paragraph (d)(2) by removing "Table 8 of"; and

■ f. In paragraph (d)(3) by removing "Table 9 of".

The revisions read as follows:

§ 431.97 Energy efficiency standards and their compliance dates.

* * * * *

(b) * * *

TABLE 1 TO § 431.97—MINIMUM COOLING EFFICIENCY STANDARDS FOR AIR CONDITIONING AND HEATING EQUIPMENT

[Not including single package vertical air conditioners and single package vertical heat pumps, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, variable refrigerant flow multi-split air conditioners and heat pumps, and double-duct air-cooled commercial package air conditioning and heating equipment]

* * * * * * *

TABLE 2 TO § 431.97—MINIMUM HEATING EFFICIENCY STANDARDS FOR AIR CONDITIONING AND HEATING EQUIPMENT

[Heat Pumps]

* * * * * * *

Equipment type	Cooling capacity	Efficiency level	Compliance date: Equipment manufactured starting on . . .

* * * * * * *

* * * * * * *

[3] And manufactured before October 9, 2015. See Table 4 of this section for updated heating efficiency standards.

* * * * *

(c) Each non-standard size packaged terminal air conditioner (PTAC) and packaged terminal heat pump (PTHP) manufactured on or after October 7, 2010 must meet the applicable minimum energy efficiency standard level(s) set forth in Table 7 of this section. Each standard size PTAC manufactured on or after October 8, 2012, and before January 1, 2017 must meet the applicable minimum energy efficiency standard level(s) set forth in Table 7 of this section. Each standard size PTHP manufactured on or after October 8, 2012 must meet the applicable minimum energy efficiency standard level(s) set forth in Table 7 of this section. Each standard size PTAC manufactured on or after January 1, 2017 must meet the applicable minimum energy efficiency standard level(s) set forth in Table 8 of this section.

* * * * *

[FR Doc. 2016–19358 Filed 8–12–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8841; Directorate Identifier 2016–NM–115–AD; Amendment 39–18611; AD 2016–16–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016–13–10, for certain The Boeing Company Model 737–300, –400, and –500 series airplanes. AD 2016–13–10 required repetitive external detailed inspections and nondestructive inspections to detect cracks in the fuselage skin along the chem-mill steps at stringers S–1 and S–2R, between station (STA) 400 and STA 460, and repair if necessary. AD 2016–13–10 also required a preventive modification of the fuselage skin at crown stringers S–1 and S–2R. This AD requires the same actions as AD 2016–13–10, and clarifies certain regulatory text. This AD was prompted by the determination that certain regulatory text in AD 2016–13–10 requires clarification. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin panels at the chem-mill steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane.

DATES: This AD is effective August 15, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 9, 2016 (81 FR 43483, July 5, 2016).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of July 23, 2012 (77 FR 36134, June 18, 2012).

We must receive any comments on this AD by September 29, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Boeing

Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8841.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8841; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jennifer Tsakoumakis, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5264; fax: 562–627–5210; email: *jennifer.tsakoumakis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On June 21, 2016, we issued AD 2016–13–10, Amendment 39–18574 (81 FR 43483, July 5, 2016) (“AD 2016–13–10”), for certain The Boeing Company Model 737–300, –400, and –500 series airplanes. AD 2016–13–10 required repetitive external detailed inspections and nondestructive inspections to detect cracks in the fuselage skin along the chem-mill steps at stringers S–1 and S–2R, between STA 400 and STA 460, and repair if necessary. AD 2016–13–10 also required a preventive modification of the fuselage skin at crown stringers S–1 and S–2R. AD 2016–13–10 resulted from a determination that, for certain airplanes, the skin pockets adjacent to the Air Traffic Control (ATC) antenna are susceptible to widespread fatigue damage. We issued AD 2016–13–10 to detect and correct fatigue cracking of the fuselage skin panels at the chem-mill steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane.

Actions Since AD 2016–13–10 Was Issued

Since we issued AD 2016–13–10, we have determined that certain regulatory text in AD 2016–13–10 requires clarification:

- We have revised paragraphs (h)(3) and (i) of this AD to refer to paragraph (l)(3) of this AD for the exception to the service information.
- We have also removed the sentence from paragraph (h)(3) of AD 2016–13–10 that provided existing repair information and instead we have included existing repair information in the introductory text of paragraph (h) of this AD.
- We have revised paragraph (j) of this AD to also refer to Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, for locations for the modification of the chem-mill steps.
- We have revised paragraphs (j) and (l)(3) of this AD to refer to paragraph (n) of this AD for the appropriate procedures to request approval of an alternative method of compliance.

We are issuing this AD to correct the unsafe condition on certain The Boeing Company Model 737–300, –400, and –500 series airplanes.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015. The service information describes procedures for repetitive external detailed inspections and non-destructive inspections to detect cracks in the fuselage skin along the chem-mill steps at stringers S–1 and S–2R, between STA 400 and STA 460, and repair of any cracking. The service information also describes procedures for a modification of the chem-mill steps at the locations identified, including related investigative actions and corrective actions, and repetitive post-mod inspections. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA’s Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously.

FAA’s Justification and Determination of the Effective Date

We are superseding AD 2016–13–10 to clarify certain regulatory text. We have made no other changes to the requirements published in AD 2016–13–10. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include Docket No. FAA–2016–8841; and Directorate Identifier 2016–NM–115–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 186 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained inspections from AD 2016–13–10.	Between 7 and 15 work-hours × $85 per hour, depending on airplane configuration = between $595 and $1,275 per inspection cycle.	$0	Between $595 and $1,275 per inspection cycle.	Between $110,670 and $237,150 per inspection cycle.
Retained modification from AD 2016–13–10.	236 work-hours × $85 per hour = $20,060.	(1)	$20,060	$3,731,160.

(1) We currently have no specific cost estimates associated with the parts necessary for the modification. We cannot determine the cost of the materials because the modification parts must be sized at the time the modification is installed, taking into account any existing repairs in the area.

We have received no definitive data that enables us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2016–13–10, Amendment 39–18574 (81 FR 43483, July 5, 2016), and adding the following new AD:

2016–16–13 The Boeing Company: Amendment 39–18611; Docket No. FAA–2016–8841; Directorate Identifier 2016–NM–115–AD.

(a) Effective Date

This AD is effective August 15, 2016.

(b) Affected ADs

This AD replaces AD 2016–13–10, Amendment 39–18574 (81 FR 43483, July 5, 2016) ("AD 2016–13–10").

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–300, -400, and -500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/BE866B732F6CF31086257B9700692796?OpenDocument&Highlight=st01219se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks found on the fuselage skin at the chem-mill steps, and the determination that, for certain airplanes, the skin pockets adjacent to the Air Traffic Control antenna are susceptible to widespread fatigue damage. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin panels at the chem-mill steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Inspections With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2016–13–10, with no changes. At the applicable time specified in tables 1, 2, 3, and 5 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, except as required by paragraphs (l)(1) and (l)(2) of this AD: Do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, except as required by paragraph (l)(3) of this AD. Repeat the applicable inspections thereafter at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015.

(1) Do an external detailed inspection for cracking of the fuselage skin chem-mill steps.

(2) Do an external non-destructive (medium frequency eddy current, magneto optical imaging, C-Scan, or ultrasonic phased array) inspection for cracking of the fuselage skin chem-mill steps.

(h) Retained Repair With Clarification of Repair Information and Service Information Exception

This paragraph restates the requirements of paragraph (h) of AD 2016–13–10, with clarification of repair information and service information exception. If any cracking is found during any inspection required by paragraph (g) of this AD, do the applicable actions specified in paragraph (h)(1), (h)(2),or (h)(3) of this AD. Installation of a repair prior to August 9, 2016 (the effective date of AD 2016–13–10) that meets the conditions specified in Part 9 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, terminates the inspections required by paragraph (g) of this AD for the area covered by that repair only. Installation of a repair prior to August 9, 2016, that meets the conditions specified in Part 9 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, covers all eight chem-mill step inspection areas between STA 410 and STA 450, and was done using a method approved in accordance with the procedures specified in paragraph (n) of this AD, terminates the inspections required by paragraph (g) of this AD for the area covered by that repair only, and terminates the preventive modification required by paragraph (i) of this AD.

(1) Repair before further flight in accordance with Part 2 (for Group 1 airplanes) or Part 7 (for Group 2 airplanes) of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015; except as required by paragraph (l)(3) of this AD. Installation of a repair that meets the conditions specified in Note (a) of table 1, 2, 3, or 5 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, terminates the repetitive inspections required by paragraph (g) of this AD for the area covered by that repair only.

(2) For Group 1 airplanes: Accomplishing the modification specified in paragraph (i) of this AD is a method of compliance with paragraph (h)(1) of this AD.

(3) If any cracking is found in any area not covered by the preventive modification doubler during any inspection required by paragraph (g) of this AD: Repair before further flight, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, except as provided by paragraph (l)(3) of this AD. Installation of this repair terminates the repetitive inspections required by paragraph (g) of this AD for the area covered by that repair only.

(i) Retained Preventive Modification With Clarification of Service Information Exception and Method of Compliance Procedures

This paragraph restates the requirements of paragraph (i) of AD 2016–13–10, with clarification of service information exception and method of compliance procedures. For Group 1 airplanes: At the applicable time specified in tables 1, 2, and 3 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, except as required by paragraphs (l)(1) and (l)(2) of this AD, do a preventive modification of the fuselage skin at crown stringers S–1 and S–2R, including all applicable related investigative actions, in accordance with Part 9 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, except as provided by paragraph (l)(3) of this AD. Do all applicable related investigative actions concurrently with the modification. Installation of a preventive modification terminates the repetitive inspections required by paragraph (g) of this AD for the modified area only. Thereafter, repeat the inspections specified in Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015.

(j) Retained Optional Modification With Clarification of Service Information

This paragraph restates the requirements of paragraph (j) of AD 2016–13–10, with clarification of service information. Accomplishing a modification of the chem-mill steps at any location identified in Boeing Service Bulletin 737–53A1293, Revision 2, dated August 10, 2011; or Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015; using a method approved in accordance with the procedures specified in paragraph (n) of this AD, terminates the repetitive inspections required by paragraph (g) of this AD for the modified area only.

(k) Retained Post-Repair/Post-Modification Inspections With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2016–13–10, with no changes. Tables 4 and 6 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, specify post-repair/post-modification airworthiness limitation inspections in compliance with 14 CFR 25.571(a)(3) at the modified locations, which support compliance with 14 CFR 121.1109(c)(2) or 129.109(b)(2). As airworthiness limitations, these inspections are required by maintenance and operational rules. It is therefore unnecessary to mandate them in this AD. Deviations from these inspections require FAA approval, but do not require an alternative method of compliance.

(l) Retained Exceptions to Service Bulletin Specifications With Clarification of Method of Compliance Procedures

This paragraph restates the requirements of paragraph (l) of AD 2016–13–10, With clarification of method of compliance procedures.

(1) Where Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, specifies a compliance time "after the Revision 3 date of this service bulletin," this AD requires compliance within the specified compliance time after August 9, 2016 (the effective date of AD 2016–13–10).

(2) Where the Condition column of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, specifies a condition based on when an airplane has or has not been inspected, this AD bases the condition on whether an airplane has or has not been inspected on August 9, 2016 (the effective date of AD 2016–13–10).

(3) Where Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015, specifies to contact Boeing for repair or preventive modification instructions: Before further flight, do the repair or preventive modification, as applicable, using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(m) Retained Credit for Previous Actions With No Changes

This paragraph restates the requirements of paragraph (m) of AD 2016–13–10, with no changes.

(1) This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before July 23, 2012 (the effective date of AD 2012–12–04, Amendment 39–17093 (77 FR 36134, June 18, 2012) ("AD 2012–12–04")), using Boeing Alert Service Bulletin 737–53A1293, Revision 1, dated July 7, 2010, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before August 9, 2016 (the effective date of AD 2016–13–10), using Boeing Service Bulletin 737–53A1293, Revision 2, dated August 10, 2011, which was incorporated by reference in AD 2012–12–04.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (o)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation method must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2012–12–04 are approved as AMOCs for the corresponding provisions of this AD.

(o) Related Information

(1) For more information about this AD, contact Jennifer Tsakoumakis, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5264; fax: 562–627–5210; email: *jennifer.tsakoumakis@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(5) and (p)(6) of this AD.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on August 9, 2016 (81 FR 43483, July 5, 2016).

(i) Boeing Alert Service Bulletin 737–53A1293, Revision 3, dated January 23, 2015.

(ii) Reserved.

(4) The following service information was approved for IBR on July 23, 2012 (77 FR 36134, June 18, 2012).

(i) Boeing Service Bulletin 737–53A1293, Revision 2, dated August 10, 2011.

(ii) Reserved.

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 4, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–18952 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–3937; Airspace Docket No. 16–AWA–1]

RIN 2120–AA66

Amendment of Class C Airspace; Syracuse Hancock International Airport, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Syracuse Hancock International Airport, NY, Class C airspace by removing a cutout from the surface area that was incorporated to accommodate operations at an airport that has permanently closed.

DATES: Effective date 0901 UTC, November 10, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *http://www.faa.gov/airtraffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates the description of the Class C airspace area at Syracuse Hancock International Airport, NY.

History

On March 28, 2016, the FAA published in the **Federal Register** a notice proposing to remove a cutout from the description of the Syracuse Hancock International Airport, NY, Class C surface area (81 FR 17113), FR Doc. 2016–06833. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies the Syracuse Hancock International Airport Class C airspace area by removing a cutout from the Class C surface area. The cutout excluded the airspace within a 0.75-nautical mile radius of the former Michael Field/Onondaga Flight School Airport. The sole purpose of the exclusion was to allow aircraft to operate freely to and from the airport without the need to contact air traffic control. Since the former airport is now permanently closed, the purpose for the exclusion no longer exists; therefore, the FAA is removing the words ". . . excluding that airspace within a 0.75-mile radius of Michael Field/Onondaga Flight School Airport . . .;" as well as the words "Michael Field/Onondaga Flight School Airport, NY (lat. 43°10′45″ N., long. 76°07′29″ W.)," from the Class C airspace description.

Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class C airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act, and its agency implementing regulations in FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" regarding categorical exclusions for procedural actions at paragraph 5–6.5a which categorically excludes from full environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points. Since this action does not change the boundaries, altitudes, or operating requirements of the Class C airspace area, and only amends the Syracuse Hancock International Airport, NY, Class C airspace by removing a cutout from the Class C surface area that had been incorporated to accommodate operations at the former Michael Field/Onondaga Flight School Airport which is now permanently closed, this airspace action is not expected to cause any potentially significant environmental impacts. In accordance with FAAO 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 4000 Class C Airspace.

AEA NY C Syracuse Hancock International Airport, NY

Syracuse Hancock International Airport, NY
(Lat. 43°06′40″ N., long. 76°06′23″ W.)

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the Syracuse Hancock International Airport; and that airspace extending upward from 1,600 feet MSL to and including 4,400 feet MSL within a 10-mile radius of the Syracuse Hancock International Airport from the 248° bearing from the airport clockwise to the 118° bearing from the airport; and that airspace extending upward from 2,700 feet MSL to and including 4,400 feet MSL within a 10-mile radius from the 118° bearing from the airport clockwise to the 188° bearing from the airport; and that airspace extending upward from 2,300 feet MSL to and including 4,400 feet MSL within a 10-mile radius of the airport from the 188° bearing from the airport clockwise to the 248° bearing from the airport.

Issued in Washington, DC, on August 8, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–19244 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–7467; Airspace Docket No. 16–AWA–2]

RIN 2120–AA66

Amendment of Class C Airspace; Boise, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Boise, ID, Class C airspace area by amending the legal description to contain the current Boise Air Terminal/Gowen Field airport name and updated airport reference point (ARP) information. This action does not change the boundaries, altitudes, or operating requirements of the Class C airspace area.

DATES: Effective date 0901 UTC, October 13, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in

Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates the airport name and ARP geographic coordinates for the Boise Air Terminal/Gowen Field airport that is contained in the Boise, ID, Class C airspace description.

History

Class C airspace areas are designed to improve air safety by reducing the risk of midair collisions in high volume airport terminal areas and to enhance the management of air traffic operations in that area. During a biennial review of the Boise, ID, Class C airspace, the FAA identified that the airport's name and ARP geographic coordinates in the airspace legal description did not match the information in the FAA's aeronautical database. This action updates the airport name and ARP geographic coordinates to coincide with the FAA's aeronautical database information. There are no changes to routing or air traffic control procedures resulting from this action.

Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class C airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Boise, ID, Class C airspace area description. The airport formerly known as "Boise Air Terminal" is renamed "Boise Air Terminal/Gowen Field" and the ARP geographic position for the airport is changed from "lat. 43°33′54″ N., long. 116°13′30″ W." to "lat. 43°33′52″ N., long. 116°13′22″ W." These amendments to the airport name and ARP geographic coordinates reflect the current information in the FAA's aeronautical database. Additionally, minor administrative edits to the legal description are made for clarity.

This is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act, and its agency implementing regulations in FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" regarding categorical exclusions for procedural actions at paragraph 5–6.5a which categorically excludes from full environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points. Since this action does not change the boundaries, altitudes, or operating requirements of the Class C airspace area, and only amends the legal description to contain the current Boise Air Terminal/Gowen Field airport name and updated ARP information, this airspace action is not expected to cause any potentially significant environmental impacts. In accordance with FAAO 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 4000 Class C Airspace.

* * * * *

ANM ID C Boise, ID [Amended]

Boise Air Terminal/Gowen Field, ID
(Lat. 43°33′52″ N., long. 116°13′22″ W.)

That airspace extending upward from the surface to and including 6,900 feet MSL within a 5-mile radius of the Boise Air Terminal/Gowen Field; that airspace extending upward from 4,600 feet MSL to and including 6,900 feet MSL within a 10-mile radius of the Boise Air Terminal/Gowen Field from the 098° bearing from the airport clockwise to the 183° bearing from the airport; that airspace extending upward from 4,200 feet MSL to and including 6,900 feet MSL within a 10-mile radius of the Boise Air Terminal/Gowen Field from the 183° bearing from the airport clockwise to the 348° bearing from the airport; and that airspace extending upward from 5,200 feet MSL to and including 6,900 feet MSL within a 10-mile radius of the Boise Air Terminal/Gowen Field from the 348° bearing from the airport clockwise to the 008° bearing from the airport.

Issued in Washington, DC, on August 8, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–19243 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–7416; Airspace Docket No. 16–AWA–5]

RIN 2120–AA66

Amendment of Class C Airspace; Peoria, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Peoria, General Downing-Peoria International Airport, IL, Class C airspace area by amending the legal description to contain the current airport name and updated airport reference point (ARP) information. This action does not change the boundaries, altitudes, or operating requirements of the Class C airspace area.

DATES: Effective date 0901 UTC, October 13, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates the airport name and ARP geographic coordinates for the General Downing-Peoria International Airport that is contained in the Peoria, IL, Class C airspace description.

History

Class C airspace areas are designed to improve air safety by reducing the risk of midair collisions in high volume airport terminal areas and to enhance the management of air traffic operations in that area. During a recent review of the Peoria, General Downing-Peoria International Airport, IL, Class C airspace area description, the FAA identified that the airport's name and ARP geographic coordinates were incorrect. This action updates the airport name and ARP geographic coordinates to coincide with the FAA's aeronautical database information. There are no changes to routing or air traffic control procedures resulting from this action.

Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class C airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Peoria, IL, Class C airspace area description. The airport formerly known as "Greater Peoria Regional Airport" is renamed "General Downing-Peoria International Airport" and the ARP geographic position for the airport is changed from "lat. 40°39′53″ N., long. 89°41′30″ W." to "lat. 40°39′51″ N., long. 89°41′36″ W." These amendments to the airport name and ARP geographic coordinates reflect the current information in the FAA's aeronautical database. Additionally, minor administrative edits to the legal description were made for readability.

This is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act, and its agency implementing regulations in FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" regarding categorical exclusions for procedural actions at paragraph 5–6.5a, which categorically excludes from full environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points. Since this action does not change the boundaries, altitudes, or operating requirements of the Class C airspace area, and only amends the legal description to contain the current airport name of Peoria, General Downing-Peoria International Airport, IL, and updated ARP information, this airspace action is not expected to cause any potentially significant environmental impacts. In accordance with FAAO 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 4000 Class C Airspace.

* * * * *

AGL IL C Peoria, General Downing-Peoria International Airport, IL [Amended]

General Downing-Peoria International Airport, IL
(Lat. 40°39′51″ N., long. 89°41′36″ W.)

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the General Downing-Peoria International Airport; that airspace extending upward from 2,000 feet MSL to and including 4,700 feet MSL within a 10-mile radius of the airport from the 284° bearing from the airport clockwise to the 154° bearing from the airport; and that airspace extending upward from 1,800 feet MSL to and including 4,700 feet MSL within a 10-mile radius of the airport from the 154° bearing from the airport clockwise to the 284° bearing from the airport.

Issued in Washington, DC, on August 8, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–19241 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 16–10]

RIN 1515–AE14

Import Restrictions Imposed on Archaeological and Ethnological Material of Syria

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on archaeological and ethnological material of Syria pursuant to the Protect and Preserve International Cultural Property Act. This document also contains the Designated List of Archaeological and Ethnological Material of Syria that describes the types of objects or categories of archaeological or ethnological material that are subject to import restrictions, if unlawfully removed from Syria on or after March 15, 2011.

DATES: *Effective Date:* August 15, 2016.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0215. For operational aspects, William R. Scopa, Branch Chief, Partner Government Agency Branch, Trade Policy and Programs, Office of Trade, (202) 863–6554, *William.R.Scopa@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

United Nations Security Council Resolution 2199, adopted on February 12, 2015, condemns the destruction of cultural heritage in Syria, particularly by the terrorist organizations Islamic State in Iraq and the Levant (ISIL) and Al-Nusrah Front (ANF), and obligates all member nations to assist in the protection of Syria's cultural heritage. Paragraph 17 of the Resolution states that all Member States shall take appropriate steps to prevent the trade in Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Syria since March 15, 2011, including by prohibiting cross-border trade in such items, thereby allowing for their eventual safe return to the Syrian people. The United States strongly supported this Resolution because "this resolution both cuts off a source of ISIL revenue and helps protect an irreplaceable cultural heritage, of the region and of the world." *See* "Explanation of Vote at a Security Council Session on Threats to International Peace and Security Caused by Terrorist Threats," Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, New York City, February 12, 2015.

For decades, the United States has shared the international concern for the need to protect endangered cultural property. The appearance in the United States of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest of the United States to join with other countries to suppress illegal trafficking of such objects in international commerce.

The United States joined international efforts and actively participated in deliberations resulting in the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). In 1983, pursuant to its international obligations arising under the 1970 UNESCO Convention, the United States enacted the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (CCPIA). Implementation of the 1970 UNESCO Convention through the CCPIA promotes U.S. leadership in achieving greater international cooperation toward preserving cultural treasures that are of importance to the nations from which they originate and greater international understanding of mankind's common heritage.

Since 1983, import restrictions have been imposed on archaeological and ethnological material from a number of States Parties to the 1970 Convention. These restrictions have been imposed as a result of requests received from those nations under Article 9 of the 1970 UNESCO Convention and pursuant to provisions of the CCPIA that allow for emergency action and international agreements between the United States and other countries.

Protect and Preserve International Cultural Property Act

The Protect and Preserve International Cultural Property Act (Pub. L. 114–151) (''the Act'') directs the President to exercise the authority of the President under section 304 of the CCPIA (19 U.S.C. 2603) to impose import restrictions set forth in section 307 of the CCPIA (19 U.S.C. 2606) with respect to any archaeological or ethnological material of Syria not later than 90 days after the date of enactment of the Act, without regard to whether Syria is a State Party to the 1970 UNESCO Convention, and without the need for a formal request from the Government of Syria. Section 3(c) of the Act provides that the President is authorized to waive the import restrictions.

On August 2, 2016, the Assistant Secretary for Educational and Cultural Affairs, Department of State, acting pursuant to delegated authority under the Act, made a Decision that, pursuant to the CCPIA, import restrictions be imposed with respect to any archaeological and ethnological material of Syria, as defined in the Act.

More information on import restrictions may be obtained from the Cultural Property Protection section of the Department of State's Cultural Heritage Center Web site (*http://culturalheritage.state.gov/*). Importation of designated archaeological and ethnological material of Syria is restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met. Below is the Designated List of Archaeological and Ethnological Material of Syria that describes the types of objects or categories of archaeological or ethnological material that are subject to import restrictions, if unlawfully removed from Syria on or after March 15, 2011. This list was prepared in consultation with the Department of State pursuant to section 305 of the CCPIA (19 U.S.C. 2604).

Designated List of Archaeological and Ethnological Material of Syria

Table of Contents

I. Stone
II. Metal
III. Ceramic, Clay, and Faience
IV. Wood
V. Glass
VI. Ivory, Bone, and Shell
VII. Plaster and Stucco
VIII. Textile
IX. Parchment, Paper, and Leather
X. Painting and Drawing
XI. Mosaic
XII. Writing

Chronology

The archaeological and ethnological material of Syria represent the following periods and cultures: Paleolithic, Neolithic, Bronze and Iron Ages, Persian, Greco-Roman, Byzantine, and Islamic until the end of the Ottoman Period, a total span from roughly 1,000,000 BC to 1920 AD. Syria has been home to a range of diverse cultures, resulting in a vast array of archaeological and ethnological material in a variety of media. The import restriction covers all archaeological and ethnological material of Syria (as defined in section 302 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601)), including but not limited to the following types of material.

I. Stone

A. Sculpture

1. Architectural elements, from temples, tombs, palaces, commemorative monuments, and domestic architecture, including columns, capitals, bases, lintels, jambs, friezes, pilasters, engaged columns, waterspouts, door leaves, mihrabs (prayer niches), fountains, and blocks from walls, floors, and ceilings. Often decorated in relief with pre-Classical (especially Neo-Hittite and Assyrian), Greco-Roman, Christian, and Islamic ornamental motifs and inscriptions. The most common architectural stones are limestone, basalt, and marble.
2. Statues, large- and small-scale, often depicting human, mythological, and animal subjects, in a great variety of styles, including but not limited to Sumerian, Assyrian, Neo-Hittite, Hellenistic, Roman, Palmyrene, and Byzantine. The most popular stones are limestone, basalt, and marble, but other types of stone are used as well.
3. Relief sculpture, large- and small-scale, including steles, wall slabs, plaques, coffins, altars, and tombstones, in a great variety of styles, including but not limited to Sumerian, Assyrian, Neo-Hittite, Hellenistic, Roman, Palmyrene, Byzantine, and Islamic. Used for commemorative, funerary, and decorative purposes. The most popular stones are limestone, basalt, and marble, but other types of stone are used as well.
4. Inlay sculpture. Large-scale examples with friezes of sculpted stone figures set into an inlaid stone or bitumen background. Small-scale examples with flat, cut-out figures in light-colored stones set against dark stone or bitumen backgrounds decorate boxes and furniture. Subjects include narrative scenes such as warfare and banqueting.

B. Seals

1. Cylinder seals: A cylindrical bead, usually ranging in size from 2 cm to 8 cm in height, with a hole pierced through its vertical axis and engraved images carved around the outer circumference. Made from a great variety of stones, including but not limited to marble, serpentine, hematite, chalcedony, lapis lazuli, agate, jasper, turquoise, garnet, carnelian, agate, quartz, onyx, sardonyx, heliotrope, jasper, rock crystal, amethyst, and goethite.
2. Stamp seals: Stones carved into animal or geometric shapes, including but not limited to square, circular, lentoid, hemispheric, gable-backed, eight-sided pyramidal, cones, cameos (carved in raised relief), ellipsoidal, and domical, with a flat surface engraved with a wide range of images. Some types have knobs on their top sides.

C. Vessels and containers—Includes conventional shapes such as bowls, cups, and jars, and vessels having the form of animals.

D. Tools and Weapons—Chipped stone (usually flint and obsidian) includes large and small blades, borers, scrapers, sickles, awls, harpoons, cores, and arrow heads. Ground stone types include mortars, pestles, millstones, querns, whetstones, choppers, axes, hammers, molds, loom weights, fishnet weights, standardized weights, and mace heads.

E. Jewelry—Jewelry of or decorated with colored and semi-precious stones, including necklaces, pendants, cameos, crowns, earrings, finger rings, bracelets, anklets, belts, girdles, pins, hair ornaments, arm bands, and beads.

F. Ostraca—Chips of stone used as surface for writing or drawing.

G. Tablets—Inscribed with pictographic, cuneiform, Phoenician, Aramaic, Greek, Latin, and Arabic scripts.

II. Metal

A. Sculpture

1. Statues, large- and small-scale, including of deities, humans (often standing, sometimes with raised arms and/or wearing helmets), and animals (such as lions), similar to those in stone. The most common materials are bronze and copper alloys, and gold and silver are used as well.
2. Relief sculpture, including plaques and appliqués.

B. Vessels and containers—Includes conventional shapes such as bowls, cups, jars, plates, platters, cauldrons, and lamps, and vessels in the form of humans, animals, hybrids, plants, and combinations or parts thereof. Decoration includes fluting, incision, appliqué, and figurative elements (such as mythological scenes, animals, festivities, and hunting). Examples include but are not limited to:

- Shallow bronze bowls bearing concentric rings of complex imagery of animals, festivities, mythological scenes, and/or militaristic vignettes on their outside (they also occur in silver and gilt silver);
- Large bronze cauldrons and cauldron stands, some of which include cast or incised decorations in the shape of bulls, griffins, or human heads;
- Ewers with bulbous bodies, long necks and handles, dating to the Sasanian and Abbasid periods; and
- Copper-alloy metalwork in the Islamic period engraved with inscriptions and elaborate floral and geometric designs, sometimes with enamel and silver inlays. Forms include bowls, ewers, candlesticks, and astrolabes.

C. Objects of daily use

1. Musical instruments, including trumpets, clappers, and sistra; furniture parts, such as chair legs, struts, and openwork panels, cast and hammered in copper/bronze; metal mirror backs, often incised with decoration.

2. Copper/bronze weights found in a variety of shapes, including that of a recumbent lion.

3. Architectural elements in copper/bronze, including door-pivots, knobs, and nails.

D. Tools—Including but not limited to axes, adzes, saws, drills, chisels, knives, hooks, pins, needles, tongs, tweezers, awls, and scientific instruments such as astrolabes. Usually in bronze and copper alloys, later joined by iron; ceremonial forms might be in gold.

E. Weapons and armor

1. Weapons include maceheads, knives, swords, curved swords, axes (including duckbill and fenestrated types), arrows, and spears. Usually in bronze and copper alloys, later joined by iron and, by the 1st millennium AD, steel as well. Later swords may have inscriptions in Arabic on the blade and/or hilt. Ceremonial forms might be in gold. In the later Islamic periods, pistols and other firearms appear.

2. Early armor consisting of small metal scales, originally sewn to a backing of cloth or leather, later augmented by helmets, body armor, shields, and horse armor. Armor and weapons of the Islamic period can be decorated with arabesque designs and inscriptions.

F. Jewelry, amulets, and seals

1. Jewelry of gold, silver, electrum, copper, and iron for personal adornment, including necklaces, pectorals, pendants in forms such as animals and insects, spirals, wire, arm bands, rosettes, hairpins, fibulae (triangular safety pins for garments), crowns and other headdresses, earrings, bracelets, anklets, belts, and finger rings.

2. Amulets in the shape of humans, animals, hybrids, plants, and combinations or parts thereof.

G. Liturgical objects—Including censers, crosses, chalices, Bible caskets, lamps, Kiddush cups, candelabra, and Torah pointers and finials.

H. Tablets—Usually of copper-alloy, lead, gold, and silver, inscribed with cuneiform, Phoenician, Aramaic, Greek, Latin, and Arabic scripts.

I. Coins—In copper or bronze, silver and gold.

1. Coins in Syria have a long history and exist in great variety, spanning the Achaemenid Persian, Hellenistic Seleucid and Ptolemaic, Roman, Sasanian, and Islamic periods. Coins from neighboring regions circulated in Syria as well. Some major mints for coinage that circulated in Syria in various periods include Emesa, Antioch, Apamea, Damascus, Beroea, and Laodicea.

2. Achaemenid coins include silver drachms stamped on the obverse with the head of the king and on the reverse with an altar.

3. Coin types and materials for coins minted or circulated in Syria during the Hellenistic Seleucid and Ptolemaic periods include gold and silver staters and obols, bronze or silver drachms, hemidrachms, tetradrachms, and smaller bronze and lead coins. These coins have a wide variety of decorative elements. Male and female busts (of kings, such as Seleucus, and queens, such as Cleopatra, or sometimes deities) are usually found on the front. Seated archers, seated gods such as Zeus, winged Victory, Tyche, and Herakles, other Greco-Roman mythological subjects, animals such as lions and elephants, palm trees, and ships are usually on the reverse of the Seleucid and Ptolemaic coins, which are often inscribed in Greek.

4. Roman coins minted and circulated in Syria during the Roman period come in a variety of denominations and weights and were struck primarily in silver and bronze, though examples (sesterces) of brass also appear. The front usually has an image of the emperor; sometimes, other notable personages (*e.g.*, Julia Domna) might appear. Subjects shown on the reverse include seated and standing deities, wreaths, temples and altars, mythological scenes, and eagles. Inscriptions are usually in Latin, but sometimes also in Greek. Late Roman (Byzantine) coins are similar, but the reverse often shows Christian iconography (*e.g.*, crosses), and inscriptions are in Greek.

5. Sasanian period coins are typically silver drachms with an image of the ruler on the obverse and a religious scene with a fire altar on the reverse.

6. Islamic coins are of gold, silver, bronze, and copper and include examples from the Ummayad, Abbasid, Ghaznavid, Fatimid, Ayyubid, Seljuq (including Zengid), Timurid, Mamluk, Safavid, and Ottoman periods. Most are stamped on both sides with inscriptions in Arabic, although a few types have an image on one side and an inscription on the other.

III. Ceramic, Clay, and Faience

A. Sculpture

1. Terracotta figurines of humans and animals are quite common and may be highly stylized. Some examples are sculptures while others are made from molds. Also molds for making such figurines.

2. Terracotta plaques, either made from molds or sculpted, with a variety of subjects. Also terracotta molds for making such plaques.

3. Terracotta models, including furniture such as chairs and beds, chariots, boats, and buildings.

B. Architectural decorations

1. Bronze and Iron Age ceramic wall decorations, including cones (sometimes with the flat end painted) and decorated knobs.

2. Islamic architectural ornaments, including carved and molded brick, and glazed ceramic tile wall and floor ornaments and panels.

C. Vessels and containers

1. Ceramic vessels occur throughout Syria's history in a wide range of shapes, sizes, fabrics, and decorative treatments. They may be handmade or wheel-made, plain or decorated with geometric, natural, or stylized motifs, with surfaces that include but are not limited to plain, slipped, burnished, varnished, painted, combed, incised, glazed, barbotine, and/or molded relief.

2. All ceramics from the Ceramic Neolithic through the Ottoman Period. Examples include but are not limited to:

- Decorated and undecorated Pre-Classical pottery, including Halaf, Ubaid, Uruk, and local and imported Bronze and Iron Age forms;
- Greco-Roman pottery, including vessels with rilled decoration and terra sigillata, a high quality table ware made of red to reddish brown clay, and covered with a glossy slip;
- Islamic plain, glazed, molded, and painted ceramics, including Raqqa wares and lusterware;
- Bathtub, slipper-shaped, cylindrical, and rectangular coffins from

all periods. Coffin lids may be modeled with human features; and

- Pilgrim flasks from all periods, characterized by flat disc-shaped sides and a single drinking spout, often flanked by stirrup handles.

D. Objects of daily use

1. Including but not limited to game pieces, loom weights, toys, and lamps.
2. Bread molds of various shapes and patterns.
3. Stamp and cylinder seals made from fired clay, faience, or a composite material related to faience.

E. Writing

1. Tablets, covered with wedge-shaped cuneiform characters or incised pictographs. They are usually unbaked and must be handled with extreme care. Shapes range from very small rounded disk forms, to small square and rectangular pillow-shaped forms, to larger rectangular tablets. They sometimes are found with an enclosing clay envelope, which is also inscribed. Both tablets and envelopes may be impressed with cylinder or stamp seals.
2. Bricks of fired clay inscribed or stamped with cuneiform inscriptions that are often placed in small frames on one of the sides. Approximately 30 × 30 × 10 cm.
3. Cones of fired clay. The large end is sometimes flat, sometimes mushroom shaped. Inscribed cuneiform characters can cover the head and/or body of the cone. Approximately 15 cm long.
4. Cylinders: Large cuneiform-inscribed objects can take the form of a multisided prism or barrel. The inscription typically covers all sides of the object. Approximately 20–30 cm high.
5. Ostraca, pottery shards used as surface for writing or drawing.

IV. Wood

A. Architectural elements—Including carved and inlaid wooden walls, floors, panels, screens, balconies, stages, doors, ceilings, beams, altars, and vaulting and elements thereof (*e.g.*, muqarnas), often decorated with stars, floral motifs, geometric patterns, religious iconography (*e.g.*, crosses), and Arabic script. Elements may comprise most or all of entire rooms.

B. Religious equipment—Including pulpits (minbars) and prayer niches (mihrabs), often intricately carved and with accompanying Arabic script decoration, and sometimes inlaid; book holders, lecterns, and cabinets; smaller objects such as cases/chests.

C. Objects of daily use—Including furniture such as chairs, stools, and beds, chests and boxes, writing and painting equipment, musical instruments (*e.g.*, ouds and rababa [fiddles]), utensils, and older game boxes and pieces.

D. Tools and Weapons—Including adzes, axes, bow drills, carpenters' levels and squares, bows, arrows, spears.

V. Glass

A. Late Bronze Age and Iron Age glass containers, including but not limited to bowls, bottles, and juglets, typically small and often elaborately decorated with multi-colored bands.

B. Roman vessels, often hand-blown, in a great variety of shapes, including but not limited to bottles, flasks, and pitchers.

C. Islamic vessels and containers in glass in a great variety of shapes, including but not limited to bowls, bottles, flasks, and glass and enamel mosque lamps.

VI. Ivory, Bone, and Shell

A. Sculpture

1. Ivory plaques sculpted in relief are a hallmark of Syrian sculpture. They were used in particular as parts of furniture; they may also have been components of tools/weapons and placed on walls as artistic elements. Decorative motifs include animals, humans, plants, combat, hunting, feasting, mythological creatures (*e.g.*, griffins), and mythological and religious scenes, among others. In some periods, Syrian ivories may look Egyptian (''Egyptianizing'').
2. Statuettes in the round of ivory, including human, animal, and mythological figures and parts thereof.

B. Objects of daily use

1. Ivory, bone, shell, and mother of pearl were used either alone or as inlays in luxury objects including furniture, chests and boxes (pyxis/pyxides), writing and painting equipment, musical instruments (*e.g.*, flutes), games (*e.g.*, dice), cosmetic containers, combs, jewelry, mirror backs and handles, amulets, fly whisk handles, and seals. Ivory objects from Islamic periods may have Arabic inscriptions.
2. Utilitarian objects of bone and ivory include but are not limited to utensils and tools such as awls and needles.

VII. Plaster and Stucco

A. Plaster—Pre-Pottery Neolithic containers were often made of plaster. In later periods, painted or gilded plaster was used for jewelry and other objects in imitation of expensive materials.

B. Stucco—Islamic architectural decorations in stucco, including vegetal forms and sculptures of humans and animals.

VIII. Textile

A. Greco-Roman and Byzantine textiles and fragments in linen, wool, cotton and silk, including but not limited to garments, blankets, bags, and hangings.

B. Islamic textiles and fragments in wool, cotton, and silk, including garments, blankets, bags, hangings, and rugs.

IX. Parchment, Paper, and Leather

A. Parchment

1. Manuscripts and portions thereof from the Byzantine and Early Islamic periods, including but not limited to liturgical works and Qur'ans, either on a scroll, single leaves, or bound as a book (or ''codex''), and written in Aramaic, Greek, Latin, and Arabic, sometimes with painted illustrations and gold leaf, on specially prepared animal skins, known as parchment.
2. Torahs and portions thereof: Scrolls bearing Hebrew writing in black ink, wound around two wooden rods, and originally housed in a cylindrical wooden case.

B. Paper

1. Qur'ans and manuscripts, and individual pages thereof, sometimes illustrated, written on paper and bound as books.
2. Rare printed books.
3. Religious, ceremonial, literary, and administrative material, including but not limited to maps, archival materials, photographs, and other rare or important documentary or historical material.

C. Leather

1. Armor, sandals, clothing, and horse trappings from the Islamic period.
2. Early texts written on leather. Manuscripts and rare books bound in leather.

X. Painting and Drawing

A. Wall Painting—These are usually painted on lime plaster in the fresco method. Syrian wall paintings come from many periods and depict a wide range of subjects. They are found in both religious and secular buildings.

1. Pre-classical paintings may show religious scenes, such as worshippers approaching standing and seated deities, sometimes with sacrificial animals, scenes with the ruler, mythological vignettes and creatures, and palm trees. Later paintings depict courtly and militaristic themes, as well as the ruler and high officials.
2. Classical period paintings generally show biblical and religious scenes. Christian paintings may show personages such as Jesus, Virgin Mary, the apostles, and angels, and include

iconography such as crosses. Jewish paintings may include iconography such as menorahs. Paintings from the Roman and other polytheistic traditions may depict deities such as winged Victory and mythological scenes. Christian wall paintings continue into the Byzantine period.

3. Islamic period paintings may depict courtly themes (*e.g.,* musicians, riders on horses) and city views, among other topics.

B. Byzantine panel paintings (icons)—Generally portray Jesus, Mary, Christian saints, religious images, and scenes of biblical events. Surrounding paintings may contain animal, floral, or geometric designs, including borders and bands. May be partially covered with gold or silver, sometimes encrusted with semi-precious or precious stones, and are usually painted on a wooden panel, often for inclusion in a wooden screen (iconastasis). May also be painted on ceramic.

XI. Mosaic

A. Floor mosaics—Greco-Roman and Byzantine, including landscapes, humans or gods, mythological scenes, and quotidian activities such as hunting and fishing. There may also be vegetative, floral, or decorative motifs. They are made from stone cut into small pieces (tesserae) and laid into a plaster matrix.

B. Wall and ceiling mosaics—generally portray religious images, scenes of Biblical and Qur'anic events, and views of cities and buildings. Surrounding panels may contain animal, floral, or geometric designs. Similar technique to floor mosaics, but may include tesserae of both stone and glass.

XII. Writing

On paper, parchment, leather, wood, ivory, stone, metal, textile, stucco, clay, mosaic, painting, and ceramic, in pictographic, cuneiform, Phoenician, Aramaic, Syriac, Hebrew, Greek, Latin, and Arabic scripts.

Inapplicability of Notice and Delayed Effective Date

Under section 553 of the Administrative Procedure Act (''APA'') (5 U.S.C. 553), agencies amending their regulations generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed amendments, consider public comments in deciding on the final content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard prior notice and comment procedures do not apply to agency rulemaking that involves the foreign affairs function of the United States. CBP has determined that this final rule involves a foreign affairs function of the United States as it implements authority granted to the President under the Protect and Preserve International Cultural Property Act and section 304 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603) to impose import restrictions on archaeological or ethnological material of Syria. The Protect and Preserve International Cultural Property Act and this rule do no more than carry out the obligations of the United States under the 1970 UNESCO Convention and Chapter VII of the United Nations Charter. Accordingly, the rulemaking requirements under the APA do not apply, and this final rule will be effective upon publication.

In addition, section 553(b)(B) of the APA provides that notice and public procedure are not required when an agency for good cause finds them impracticable, unnecessary, or contrary to public interest. CBP has determined that providing prior notice and public procedure for these regulations would be impracticable, unnecessary, and contrary to the public interest because immediate action is necessary, and contemplated, in order to respond to the ongoing pillage of Syrian cultural antiquities and to avoid damage to those antiquities in Syria until hostilities have ceased. Any delay in this action will likely result in further damage to the Syrian cultural antiquities that Congress was seeking to protect with the Protect and Preserve International Cultural Property Act.

Finally, section 553(d)(3) of the APA permits agencies to make a rule effective less than 30 days after publication when the agency finds that good cause exists for dispensing with a delayed effective date. For the reasons described above, CBP finds that good cause exists to make these regulations effective without a delayed effective date.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 4, 1993), because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 continues to read, and the specific authority for § 12.104k is added to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Section 12.104k also issued under Pub. L. 114–151, 130 Stat. 369; 19 U.S.C. 2612;

* * * * *

■ 2. Add § 12.104k to read as follows:

§ 12.104k Emergency protection for Syrian cultural antiquities.

(a) *Restriction.* Importation of archaeological or ethnological material of Syria is restricted pursuant to the Protect and Preserve International Cultural Property Act (Pub. L. 114–151) and section 304 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603), unless a restriction is waived pursuant to section 3(c) of the Protect and Preserve International Cultural Property Act.

(b) *Description of restricted material.* The term ''archaeological or ethnological material of Syria'' means cultural property as defined in section 302 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601) that is unlawfully removed from Syria on or after March 15, 2011. CBP Decision 16–10 sets forth the Designated List of Archaeological and Ethnological Material of Syria that describes the types of objects or categories of archaeological or ethnological material that are subject to import restrictions.

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

Approved: August 11, 2016.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2016–19491 Filed 8–11–16; 4:15 pm]

BILLING CODE 9111–14–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in September 2016. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective September 1, 2016.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy (*Murphy.Deborah@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4400 ext. 3451. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400 ext. 3451.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for September 2016.[1]

The September 2016 interest assumptions under the benefit payments regulation will be 0.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for August 2016, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during September 2016, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 275, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
275	9–1–16	10–1–16	0.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 275, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

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[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * * * * * *								
275	9–1–16	10–1–16	0.50	4.00	4.00	4.00	7	8

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2016–19295 Filed 8–12–16; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 237a

[Docket ID: DOD–2016–OS–0084]

RIN 0790–AI94

Public Affairs Liaison With Industry

AGENCY: Assistant to the Secretary of Defense for Public Affairs, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes regulations concerning Public Affairs liaison with industry. These Code of Federal Regulations (CFR) provisions are outdated and no longer accurate or applicable as written. The guidance, as revised, sets forth internal standards for how DoD employees should reach out and engage with industry. With respect to the visual information portion, it is essentially a collection and discussion of currently applicable intellectual property law that does not create any new public duties or obligations. Therefore, these regulations are removed from the CFR.

DATES: This rule is effective on August 15, 2016.

FOR FURTHER INFORMATION CONTACT: Patricia Toppings at 571–372–0485.

SUPPLEMENTARY INFORMATION: This rule will be reported in future status updates as part of DoD's retrospective plan under Executive Order 13563 completed in August 2011. DoD's full plan can be accessed at: *http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036.*

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publically available on the Department's issuance Web site. Once signed, a copy of DoD's internal guidance contained in DoD Instruction 5410.20 will be made available at *http://www.dtic.mil/whs/directives/corres/pdf/541020p.pdf.*

List of Subjects in 32 CFR Part 237a

Armed forces; Business and industry.

PART 237a—[REMOVED]

Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 237a is removed.

Dated: August 9, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–19345 Filed 8–12–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0644]

RIN 1625–AA00

Safety Zone; Apra Outer Harbor, Naval Base Guam

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of Apra Harbor, Guam in the vicinity of San Luis Beach, Sumay Cove and Commadores Cut. The safety zone is needed to protect personnel, vessels, and the marine environment from vessel operations in the area. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Guam.

DATES: This rule is effective without actual notice from August 15, 2016 through 7 p.m. August 31, 2016. For the purposes of enforcement, actual notice will be used from 7 a.m. July 31, 2016 through August 15, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0644 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Kristina Gauthier, Waterways Management, U.S. Coast Guard; telephone 671–355–4866, email *Kristina.M.Gauthier@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details for this operation were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect vessels and waterway users from the hazards associated with the operation.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Guam has determined that potential hazards associated with vessel operations starting July 31, 2016 will be a safety concern for anyone in the vicinity of the operations. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during active vessel operations.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. on July 31, 2016 through 7 p.m. on August 31, 2016. The safety zone will cover all navigable waters in the vicinity of vessel operations to include waters off of San Luis Beach out 900 yards then across to Commadores Cut, down to the Navy Restricted area and along the shore line back to San Luis Beach, restricting access to Sumay Cove to Navy and Coast Guard operational responses. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the vessel operations are ongoing. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Apra Outer Harbor in Naval Base Guam for four days of the 32 day window and vessel traffic in this area is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 32 days with an expected enforcement of only 4 days that will prohibit entry of vessels to all navigable waters in the vicinity of vessel operations to include waters off of San Luis Beach out 900 yards then across to Commadores Cut, down to the Navy

Restricted area and along the shore line back to San Luis Beach and restricting access to Sumay Cove to Navy and Coast Guard operational responses. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–0644 to read as follows:

§ 165. T14–0644 Safety Zone; Apra Outer Harbor, Naval Base Guam.

(a) *Location.* The following areas comprise a safety zone within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70–15): All navigable waters bounded by an imaginary line starting at 13°26′34″ N., 144°38′44″ E. at San Luis Beach; thence 900 yards to 13°26′57″ N., 144°38′44″ E.; thence to 13°26′57″ N., 144°39′31″ E. across Commadores Cut; thence to 13°26′42″ N., 144°39′45″ E. at the Navy Restricted area; thence to 13°26′36″ N., 144°39′45″ E. at Guam Shipyard; and then along the shore line back to San Luis Beach, restricting access to Sumay Cove to Navy and Coast Guard operational responses. All coordinates are NAD 83.

(b) *Effective dates and enforcement period.* This rule is effective without actual notice from August 15, 2016 through 7 p.m. August 31, 2016. For the purposes of enforcement, actual notice will be used from 7 a.m. July 31, 2016 through August 15, 2016 and this rule is enforced from the time vessel operations begin until they are completed.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. No vessels may enter or transit safety zone unless authorized by the COTP or a designated representative thereof.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce this temporary safety zone.

(e) *Waiver.* The COTP may waive any of the requirements of this rule for any person, vessel or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(f) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: July 14, 2016.

James B. Pruett,

Captain, U.S. Coast Guard, Captain of the Port, Guam.

[FR Doc. 2016–19372 Filed 8–12–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0365; FRL–9949–82–Region 7]

Approval of Iowa's Air Quality Implementation Plans; Regional Haze State Implementation Plan Revision and 2013 Five-Year Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the Iowa State Implementation Plan (SIP) revision submitted to EPA by the State of Iowa on July 19, 2013, documenting that the State's existing plan is making adequate progress to achieve visibility goals by 2018. The Iowa SIP revision addressed the Regional Haze Rule (RHR) requirements under the Clean Air Act (CAA or Act) to submit a report describing progress in achieving reasonable progress goals (RPGs) to improve visibility in Federally designated areas in nearby states that may be affected by emissions from sources in Iowa. EPA is taking final action to approve Iowa's determination that the existing Regional Haze (RH) SIP is adequate to meet the visibility goals and requires no substantive revision at this time.

DATES: This final rule is effective September 14, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2014–0365. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Stephen Krabbe, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7991, or by email at *krabbe.stephen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

I. Background
II. Summary of SIP Revision
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On July 3, 2014, (79 FR 37976), EPA published a notice of proposed rulemaking (NPR) for the State of Iowa. In the NPR, EPA proposed approval of Iowa's progress report SIP, a report on progress made in the first implementation period towards RPGs for Class I areas that are affected by emissions from Iowa sources. This progress report SIP and accompanying cover letter also included a determination that Iowa's existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018.

On July 31, 2015, (80 FR 45631), EPA published a supplement to the NPR (SNPR) for the State of Iowa. In the SNPR, EPA addressed the potential effects on the NPR from the April 29, 2014, decision of the United States Supreme Court (Supreme Court) remanding to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) EPA's Cross-State Air Pollution Rule (CSAPR) for further proceedings and the D.C. Circuit's decision to lift the stay of CSAPR. The supplemental notice provided clarity regarding how the court cases impacted Iowa's regional haze rule.

States are required to submit a progress report in the form of a SIP revision every five years that evaluates progress towards the RPGs for each mandatory Class I Federal area within the state and in each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. See 40 CFR 51.308(g). In addition, the provisions under 40 CFR 51.308(h) require states to submit, at the same time as the 40 CFR 51.308(g) progress report, a determination of the adequacy of the state's existing regional haze SIP. The first progress report SIP is due five years after submittal of the initial regional haze SIP. IDNR submitted its regional haze SIP on March 25, 2008, and submitted its progress report SIP revision on July 19, 2013. EPA finds that it satisfies the requirements of 40 CFR 51.308(g) and (h). No comments regarding the NPR or SNPR were received during the public comment period.

II. Summary of SIP Revision

On July 19, 2013, Iowa submitted a SIP revision describing the progress made toward the RPGs of Class I areas outside Iowa that are affected by emissions from Iowa's sources in accordance with requirements in the Regional Haze Rule.[1] This progress report SIP also included an assessment of whether Iowa's existing regional haze SIP is sufficient to allow nearby states with Class I areas to achieve the reasonable progress goals by the end of the first planning period.

The provisions in 40 CFR 51.308(g) require a progress report SIP to address seven elements. In the NPR, EPA proposed to approve the SIP as adequately addressing each element under 40 CFR 51.308(g). The seven elements and EPA's proposed conclusions in the NPR are briefly summarized below.

The provisions in 40 CFR 51.308(g) require progress report SIPs to include a description of the status of measures in the regional haze implementation plan; a summary of the emissions reductions achieved; an assessment of the visibility conditions for each Class I area in the state; an analysis of the changes in emissions from sources and activities within the state; an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded visibility improvement progress in Class I areas impacted by the state's sources; an assessment of the sufficiency of the regional haze implementation plan to enable states to meet reasonable progress goals; and a review of the state's visibility monitoring strategy. As explained in detail in the NPR and the SNPR, EPA proposed Iowa's progress report SIP addressed each element and therefore satisfied the requirements under 40 CFR 51.308(g).

In addition, pursuant to 40 CFR 51.308(h), states are required to submit, at the same time as the progress report SIP revision, a determination of the adequacy of their existing regional haze SIP and to take one of four possible actions based on information in the progress report. In its progress report SIP, Iowa determined that its regional haze SIP is sufficient to meet its obligations related to the reasonable progress goals for Class I areas affected by Iowa's sources. The State accordingly provided EPA with a negative declaration that further revision of the existing regional haze implementation plan was not needed at this time. *See* 40 CFR 51.308(h)(1). As explained in detail in the NPR and the SNPR, EPA proposed to determine that Iowa had adequately addressed 40 CFR 51.308(h) because the visibility data trends at the Class I areas impacted by Iowa's sources and the emissions trends of the largest emitters in Iowa of visibility-impairing pollutants both indicate that the reasonable progress goals for 2018 for these areas will be met or exceeded. Therefore, in our NPR and SNPR, EPA proposed to approve Iowa's progress report SIP as meeting the requirements of 40 CFR 51.308(g) and (h).

III. Final Action

EPA is taking final action to approve Iowa's regional haze five-year progress report and SIP revision, submitted July 19, 2013, as meeting the applicable regional haze requirements as set forth in 40 CFR 51.308(g) and 51.308 (h).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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[1] EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713) known as the Regional Haze Rule. The Regional Haze Rule revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. *See* 40 CFR 51.308 and 51.309.

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 14, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 20, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

Subpart Q—Iowa

■ 2. In § 52.820(e) the table is amended by adding and reserving entry (43), and by adding entry (44) in numerical order to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	* *	*	*	* *
(43) Reserved				
(44) State Implementation Plan (SIP) Revision for the Attainment and Maintenance of National Ambient Air Quality Standards for Regional Haze (2013 Five-Year Progress Report).	Statewide	7/19/13	8/15/16, [Insert **Federal Register** citation].	[EPA–R07–OAR–2014–0365; FRL–9949–82–Region 7.

[FR Doc. 2016–19041 Filed 8–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2012–0865; A–1–FRL–9950–60–Region 1]

Air Plan Approval; NH; Control of Volatile Organic Compound Emissions From Minor Core Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on October 4, 2012. The revision clarifies Reasonably Available Control Technology (RACT) requirements as they apply to minor core activities of volatile organic compound (VOC) sources. The intended effect of this action is to approve these requirements into the New Hampshire SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective October 14, 2016, unless EPA receives adverse comments by September 14, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2012–0865 at *http://www.regulations.gov,* or via email to *Mackintosh.David@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David L. Mackintosh, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, tel. 617–918–1584, fax 617–918–0668, email *Mackintosh.David@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What action is EPA taking?
II. What is the background for this action?
III. What is EPA's evaluation of New Hampshire's submittal?
IV. Final Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is approving, and incorporating into the New Hampshire SIP, revised sections of New Hampshire's Chapter Env-A 1200 "Volatile Organic Compounds (VOCs) Reasonably Available Control Technology (RACT)," submitted by the New Hampshire Department of Environmental Services (NH DES) to EPA as a SIP revision on October 4, 2012. Specifically, EPA is approving New Hampshire's revised Env-A 1201.04 "Exemptions: Conditions," revised Env-A 1203.38 definition of "minor core activity," and revised Env-A 1222.01 "Applicability Criteria for Miscellaneous and Multicategory Stationary VOC Sources."

II. What is the background for this action?

EPA has established, and periodically reviews and revises, the National Ambient Air Quality Standard (NAAQS) for ground-level ozone. On March 27, 2008 (73 FR 16436), EPA published a final rule for a new 8-hour ozone standard of 0.075 parts per million (ppm). On May 21, 2012 (77 FR 30088), EPA designated areas for the 2008 ozone NAAQS and designated New Hampshire as Unclassifiable/Attainment for the 2008 ozone NAAQS. Subsequently, EPA revised the ozone NAAQS on October 26, 2015 (80 FR 65292). EPA has not yet, however, issued designations for the 2015 ozone NAAQS.

New Hampshire is also part of the Ozone Transport Region (OTR) under Section 184(a) of the Clean Air Act (CAA). Sections 182(b)(2) and 184 of the CAA compel states with moderate and above ozone nonattainment areas, as well as areas in the OTR respectively, to submit a SIP revision requiring the implementation of RACT for sources covered by a Control Techniques Guideline (CTG) and for all major sources. A CTG is a document issued by EPA which establishes a "presumptive norm" for RACT for a specific VOC source category.

III. What is EPA's evaluation of New Hampshire's submittal?

EPA previously approved New Hampshire's Env-A 1200 on November 8, 2012 (77 FR 66921). New Hampshire's October 4, 2012 submittal includes revisions to three sections of this regulation.

Revised Env-A 1201.04 extends by one year, from June 1, 2012 until May 31, 2013, the option for a source to voluntarily restrict their emissions to remain below the relevant applicability threshold and thus not be subject to certain requirements. Specifically, this option applies to newly regulated source categories added to Env-A 1200 on June 1, 2011. The process shall be exempt if the owner or operator files an application for a permit before May 31, 2013 and accepts an enforceable permit that limits emissions below the relevant applicability threshold and contains the necessary testing and recordkeeping and reporting requirements to demonstrate compliance.

Revised Env-A 1203.38 clarifies the definition of "minor core activity" as any core activity at a stationary source for which the VOC emissions from processes and devices are less than the relevant RACT threshold and less than 5 tons per consecutive 12-month period. The interpretation of the definition did not change but rather the language was revised to make the definition clearer.

Lastly, in revised Env-A 1222.01, a prior exemption for minor core activities has been removed. Previously, minor core activities with VOC emissions less than 5 tons per consecutive 12 month period were exempt from New Hampshire's Env-A 1222 emission control and recordkeeping requirements. In the revised regulations, minor core activities are considered in a source's applicability determination and thus, may be subject to the emission control and recordkeeping requirements in Env-A 1222.

The three revisions discussed above serve to clarify the existing regulation and are not intended to significantly impact its original interpretation. New Hampshire's Env-A 1200 VOC RACT regulation remains consistent with the Clean Air Act and EPA guidance. Therefore, the revised provisions satisfy the anti-back sliding requirements in Section 110(l) of the CAA and EPA is approving these revised provisions into the New Hampshire SIP.

IV. Final Action

EPA is approving, and incorporating into the New Hampshire SIP, revised sections of New Hampshire's Chapter Env-A 1200, "Volatile Organic Compounds (VOCs) Reasonably Available Control Technology (RACT)," submitted on October 4, 2012. Specifically, EPA is approving New Hampshire's revised Env-A 1201.04 "Exemptions: Conditions," revised Env-A 1203.38 definition of "minor core activity," and revised Env-A 1222.01 "Applicability Criteria for Miscellaneous and Multicategory Stationary VOC Sources."

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective October 14, 2016 without further notice unless the Agency receives relevant adverse comments by September 14, 2016.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 14, 2016 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the State of New Hampshire regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov.*

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 14, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 1, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—New Hampshire

■ 2. In § 52.1520(c), the table is amended by revising the entry for "Env-A 1200" to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date [1]	Explanations
*	* *	*	*	* *
Env-A 1200	Volatile Organic Compounds (VOCs) Reasonably Available Control Technology (RACT).	6/1/2011	8/15/2016 [Insert **Federal Register** citation].	Revised sections 1201.04, 1203.38, and 1222.01 approved in this action.

EPA-APPROVED NEW HAMPSHIRE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date [1]	Explanations

* * * * * * *

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

[FR Doc. 2016–19123 Filed 8–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0846, FRL–9950–41–Region 9]

Partial Stay; Arizona; Regional Haze Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial stay.

SUMMARY: The Environmental Protection Agency (EPA) is granting an administrative stay of specific provisions of the Arizona Regional Haze Federal Implementation Plan (FIP) applicable to the Phoenix Cement Company (PCC) Clarkdale Plant and the CalPortland Company (CPC) Rillito Plant under the Clean Air Act (CAA). In response to requests from PCC and CPC, we are staying the effectiveness of control technology optimization requirements for nitrogen oxides (NO_X) applicable to Kiln 4 at the Clarkdale Plant and Kiln 4 at the Rillito Plant during the EPA's reconsideration of these requirements under CAA section 307(d)(7)(B) for a period of 90 days. Today's action reflects this stay in the Code of Federal Regulations.

DATES: Effective August 15, 2016, 40 CFR 52.145(k)(6) and Appendix A to 40 CFR 52.145 are stayed until November 14, 2016. The addition of 40 CFR 52.145(n) in this rule is also effective from August 15, 2016 until November 14, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2015–0846. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Colleen McKaughan, U.S. EPA, Region 9, Air Division, Air-1, 75 Hawthorne Street, San Francisco, CA 94105. Colleen McKaughan can be reached at telephone number (520) 498–0118 and via electronic mail at *mckaughan.colleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to the EPA.

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I. Background
II. Administrative Stay
III. Statutory and Executive Order Reviews

I. Background

This section provides a brief overview of the background for today's action. Please refer to our proposed action on reconsideration for additional background.[1] On September 3, 2014, the EPA promulgated a FIP addressing certain requirements of the CAA and the EPA's Regional Haze Rule for sources in Arizona.[2] Among other things, the Arizona Regional Haze FIP includes NO_X emission limits achievable with selective non-catalytic reduction (SNCR) applicable to Clarkdale Kiln 4 and Rillito Kiln 4. In particular, the EPA established two alternative emission limits for NO_X on Clarkdale Kiln 4: A 2.12 lb/ton limit or an 810 tons/year limit. The lb/ton limit equates to the installation of a SNCR system, based on a 50 percent control efficiency, while the ton/year limit could be met either by installing SNCR or by maintaining recent production levels. We set an emission limit for NO_X at Rillito Kiln 4 of 3.46 lb/ton, based on a 35 percent control efficiency. The FIP also includes monitoring, recordkeeping, and reporting requirements and a compliance deadline for the final NO_X emission limits of December 31, 2018. Finally, in response to comments alleging that SNCR control efficiencies of 50 percent for Clarkdale Kiln 4 and 35 percent for Rillito Kiln 4 were unsupported and that SNCR was capable of achieving higher control efficiencies, we established requirements for control technology demonstrations ("optimization requirements") for the SNCR systems at both kilns, which would entail the collection of data that then could be used to determine if a higher control efficiency was achievable.

PCC and CPC each submitted a petition to the EPA on November 3, 2014, seeking administrative reconsideration and a partial stay of the final FIP under CAA section 307(d)(7)(B) and the Administrative Procedure Act (APA).[3] In their petitions, both companies raised multiple objections to the optimization requirements in the FIP. CPC asserted that the requirements were burdensome, expensive, and unnecessary, given that CPC had already "evaluated fuels, fuel fineness, and the other characteristics listed in the Optimization Protocol" as part of its effort to reduce energy usage.[4] PCC stated that the requirements "would be burdensome to implement" and "would substantially interfere with the cement manufacturing operations" at the Clarkdale Plant.[5] PCC further asserted that requirements would harm the Salt River Pima-Maricopa Indian Community (SRPMIC), which relies on revenue from the Clarkdale Plant.[6]

The EPA sent letters to PCC and CPC on January 16, 2015 and January 27, 2015, respectively, granting reconsideration of the optimization requirements pursuant to CAA section

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[1] 81 FR 42600 (June 30, 2016).

[2] 79 FR 52420 (September 3, 2014)(Arizona Regional Haze "Phase 3" Rule).

[3] Letter from Verle C. Martz, PCC, to Regina McCarthy, EPA (November 3, 2014); Letter from Jay Grady, CPC, to Regina McCarthy, EPA (November 3, 2014).

[4] Letter from Jay Grady, CPC, to Regina McCarthy, EPA (November 3, 2014), attachment entitled "Petition of CalPortland Company for Partial Reconsideration and Request for Administrative Stay of EPA Final Rule, Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze and Interstate Visibility Transport Federal Implementation Plan Published at 79 FR 52420" at 4.

[5] Letter from Verle C. Martz, PCC, to Regina McCarthy, EPA (November 3, 2014) at 2.

[6] We note that while the Clarkdale Plant is tribally owned, it is not located on tribal land. It is subject to State jurisdiction and is regulated by ADEQ.

307(d)(7)(B).[7] However, the EPA did not act on the companies' request for a stay of those requirements. On June 30, 2016, the EPA issued its proposed action on reconsideration, proposing to replace the optimization requirements for both kilns with a series of revised recordkeeping and reporting requirements.[8]

II. Administrative Stay

In light of the EPA's proposed rule to replace the optimization requirements applicable to Clarkdale Kiln 4 and Rillito Kiln 4 and the fact that these provisions require implementation of various operational adjustments and submittal of protocols and reports in advance of the December 31, 2018 compliance deadline for the NO_X emission limits, the EPA is now granting PCC's and CPC's petitions for a stay of the effectiveness of those requirements under CAA section 307(d)(7)(B). In particular, we are staying the effectiveness of 40 CFR 52.145(k)(6) and Appendix A to 40 CFR 52.145 for a period of 90 days, which is the maximum length of a stay authorized under CAA section 307(d)(7)(B). The EPA anticipates that we will complete final action on reconsideration prior to the conclusion of this stay, but if we are unable to do so, we will consider granting a further stay of the optimization requirements under section 705 of the APA.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) because it applies to only two facilities and is therefore not a rule of general applicability.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. This rule is not subject to the APA but is subject to the CAA, which does not require notice and comment rulemaking to take this action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action stays the effectiveness of optimization requirements that currently apply to the PCC Clarkdale Plant. The profits from the Clarkdale Plant are used to provide government services to SRPMIC's members.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing our proposed action on reconsideration of the optimization requirements to permit them to have meaningful and timely input into its development.[9]

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of environmental protection for any affected populations.

K. Congressional Review Act

This rule is exempt from the CRA because it is a rule of particular applicability.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Visibility.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 1, 2016.

Gina McCarthy,
Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

■ 2. Amend § 52.145 by adding paragraph (n) to read as follows:

§ 52.145 Visibility protection.

* * * * *

(n) The effectiveness of paragraph (k)(6) of this section and Appendix A to this section is stayed from August 15, 2016 until November 14, 2016.

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[7] Letter from Jared Blumenfeld, EPA, to Verle C. Martz, PCC (January 16, 2015); Letter from Jared Blumenfeld, EPA, to Jay Grady, CPC (January 27, 2015).

[8] 81 FR 42600.

[9] *See* Summary of Consultation with SRPMIC Regarding Regional Haze FIP Reconsideration (Docket ID No. EPA–R09–OAR–2015–0846–0026).

[FR Doc. 2016–19113 Filed 8–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0719; FRL–9949–49]

n-Butyl 3-hydroxybutyrate and Isopropyl 3-hydroxybutyrate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of n-butyl 3-hydroxybutyrate (CAS Reg. No. 53605–94–0) and isopropyl 3-hydroxybutyrate (CAS Reg. No. 54074–94–1) when used as inert ingredients (solvents) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest; to animals; and to food contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils. Steptoe and Johnson, on behalf of Eastman Chemical Company, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of these exemptions from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of n-butyl 3-hydroxybutyrate and isopropyl 3-hydroxybutyrate when applied or used under these conditions.

DATES: This regulation is effective August 15, 2016. Objections and requests for hearings must be received on or before October 14, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0719, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0719 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 14, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0719, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of November 23, 2015 (80 FR 72941) (FRL–9936–73), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–10841) by Steptoe and Johnson LLP (1330 Connecticut Avenue NW., Washington, DC 20036–1795) on behalf of the Eastman Chemical Company (200 South Wilcox Drive, Kingsport, TN 37660–5280). The petition requested that 40 CFR 180.910, 180.930, and 180.940 be amended to establish exemptions from the requirement of a tolerance for residues of n-butyl 3-hydroxybutyrate (CAS Reg. No. 53605–94–0); and isopropyl 3-hydroxybutyrate (CAS Reg. No. 54074–94–1) when used as inert ingredients (solvents) in pesticide formulations applied to pre- and post-harvest crops under 40 CFR 180.910; to animals under 40 CFR 180.930; and to food contact surface sanitizing solutions under 40 CFR 180.940(a). That document referenced a summary of the petition prepared by Steptoe and Johnson on behalf of Eastman Chemical Company, the petitioner, which is available in the docket, *http://www.regulations.gov.*

Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit V.B.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for n-butyl 3-hydroxybutyrate and isopropyl 3-hydroxybutyrate including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with n-butyl 3-hydroxybutyrate and isopropyl 3-hydroxybutyrate follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by n-butyl 3-hydroxybutyrate and isopropyl 3-hydroxybutyrate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

n-Butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate are structurally similar chemical entities differing only in one methyl group (CH_3). Therefore the toxicity of these two chemicals is expected to be similar. Since there are no adequate data available for each one individually, the Agency utilizes read-across data to fill data gaps.

n-Butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate both exhibit very low levels of acute oral, dermal and inhalation toxicity each with LD_{50} values >5,000 mg/kg. n-Butyl-3-hydroxybutyrate is moderately irritating to the rabbit eye and is slightly irritating to rabbit skin. Isopropyl-3-hydroxybutyrate is not irritating to rabbit skin. n-Butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate are not dermal sensitizers.

In a 28-day subchronic feeding study in rats which included a reproduction/developmental screening assessment, exposure to isopropyl-3-hydroxybutyrate resulted in no adverse test item-related toxicological effects on clinical observations, no adverse effects seen in FOB assessments, no adverse effects on motor activity evaluations, no adverse effects seen in gross necropsy observations, male or female reproductive performance, or neurobehavioral parameters. The no-observed-adverse-effect-level (NOAEL) for reproductive toxicity was 1,000 mg/kg/day. The NOAEL for systemic toxicity was 1,000 mg/kg/day. In the absence of effects on the general physical condition of F_1 pups, the NOAEL for neonatal toxicity was 1,000 mg/kg/day.

n-Butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate were negative in reverse gene mutation assays. Isopropyl-3-hydroxybutyrate was negative in a chromosome aberration assay and a gene mutation assay.

There were no neurotoxicity or immunotoxicity studies available. However, there was no evidence of adverse neurotoxic effects noted during the FOB evaluations and the motor activity evaluations. There was no evidence of immunotoxicity in the available database.

Based on the negative responses seen in the genotoxicity and lack of systemic toxicity in the reproductive and developmental screening study, n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate are considered unlikely to be carcinogenic.

n-Butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate both have a low solubility; therefore, it is unlikely that either material will be absorbed by the body and become systemically bioavailable. Both compounds are expected to hydrolyze quickly and completely *in vivo,* and the resulting hydrolysis products are very close in structure or are the same, depending on the specific hydrolysis product. The available *in vitro* data suggests that isopropyl-3-hydroxybutyrate can undergo fast hydrolysis by enzymes in the plasma and liver to produce n-butyl-3-hydroxybutyrate, which is perhaps further metabolized. Isopropyl-3-hydroxybutyrate concentration decreased from approximately 70 μM to below the limit of detection (<6.68 μM) in plasma within 2 hours and in rat liver S9 fraction within 30 minutes. Although stable in phosphate buffer, isopropyl-3-

hydroxybutyrate concentration levels decreased from 70 μM to below the LOD within 30 minutes with ONLY slight increases in beta-hydroxybutyate levels indicating that either it is formed in small quantity (minor pathway) and/or rapidly metabolized and removed from the circulation.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

An acute effect was not found in the database therefore an acute dietary assessment is not necessary. In the 28-day subchronic oral toxicity study in rats with neurotoxicity measurements, no toxicity was observed at doses up to 1,000 mg/kg/day. Therefore, the Agency concluded that it is not necessary to conduct a quantitative risk assessment.

C. Exposure Assessment

1. *Dietary exposure from food, feed uses and drinking water.* In evaluating dietary exposure to n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate in food and drinking water as follows: Dietary exposure can occur from eating foods or ingesting drinking water containing residues of n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate. Because no hazard endpoint of concern was identified for the acute and chronic dietary assessment (food, feed and drinking water uses, a quantitative dietary exposure risk assessment was not conducted

2. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

n-Butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate may be used in inert ingredients in products that are registered for specific uses that may result in residential exposure, such as pesticides used in and round the home. However, since no endpoint of concern identified in the available database, it is not necessary to conduct a quantitative residential exposure assessment.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate to share a common mechanism of toxicity with any other substances, and n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

As part of its qualitative assessment, EPA evaluated the available toxicity and exposure data on n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. EPA considers the toxicity database to be sufficient to evaluate risk and has identified no residual uncertainty with regard to prenatal and postnatal toxicity or exposure. No hazard was identified based on the available studies; therefore, EPA concludes that there are no threshold effects of concern to infants, children, or adults from n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate. As a result, EPA concludes that no additional margin of exposure (safety) is necessary.

E. Aggregate Risks and Determination of Safety

Because no toxicological endpoints of concern were identified, EPA concludes that aggregate exposure to residues of n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate will not pose a risk to the U.S. population, including infants and children, and that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate in or on any food commodities. EPA is not establishing a limitation on the amount of n-butyl-3-hydroxybutyrate and isopropyl-3-hydroxybutyrate that may be used in pesticide formulations applied to growing crops.

B. Comments

Two generic comments objecting to the use of chemicals in food were submitted to the docket for this action.

Neither of the comments contained any specific information bearing on the Agency's safety finding for these chemicals. The Agency understands the commenters' concerns and recognizes that some individuals believe that pesticides should be banned on agricultural crops. However, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. The comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

VI. Conclusions

Therefore, exemptions from the requirement of a tolerance are established under 40 CFR 180.910, 40 CFR 180.930, and 40 CFR 180.940(a) for n-butyl-3-hydroxybutyrate (CAS Reg. No. 53605–94–0) and isopropyl-3-hydroxybutyrate (CAS Reg. No. 54074–94–1) when used as inert ingredients (solvents) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest (40 CFR 180.910); to animals (40 CFR 180.930); or to food contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils (40 CFR 180.940(a)).

VII. Statutory and Executive Order Reviews

This action establishes exemptions from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, add alphabetically the inert ingredients to the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * * * *		
n-Butyl-3-hydroxybutyrate (CAS Reg. No. 53605–94–0)	....	Solvent.
* * * * * * *		
Isopropyl-3-hydroxybutyrate (CAS Reg. No. 54074–94–1)	....	Solvent.
* * * * * * *		

■ 3. In § 180.930, add alphabetically the inert ingredients to the table to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * * * *		
n-Butyl-3-hydroxybutyrate (CAS Reg. No. 53605–94–0)		Solvent.
* * * * * * *		
Isopropyl-3-hydroxybutyrate (CAS Reg. No. 54074–94–1)		Solvent.
* * * * * * *		

■ 4. In § 180.940(a), add alphabetically the inert ingredients to the table in paragraph (a) to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
* * * * * * *		
n-Butyl-3-hydroxybutyrate	53605–94–0	Solvent.
* * * * * * *		
Isopropyl-3-hydroxybutyrate	54074–94–1	Solvent.
* * * * * * *		

* * * * *

[FR Doc. 2016–19115 Filed 8–12–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 173 and 179

[Docket No. PHMSA–2016–0011 (HM–251C)]

RIN 2137–AF17

Hazardous Materials: FAST Act Requirements for Flammable Liquids and Rail Tank Cars

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is issuing this final rule to codify in the Hazardous Materials Regulations certain mandates and minimum requirements of the FAST Act. Specifically, the FAST Act mandates a revised phase-out schedule for all DOT Specification 111 tank cars used to transport unrefined petroleum products (*e.g.,* petroleum crude oil), ethanol, and other Class 3 flammable liquids. The FAST Act also requires that each tank car built to meet the DOT Specification 117 and each non-jacketed tank car retrofitted to meet the DOT Specification 117R be equipped with a thermal protection blanket that is at least ½-inch thick and meets existing thermal protection standards. Further, the FAST Act mandates minimum top fittings protection requirements for tank cars retrofitted to meet the DOT Specification 117R.

DATES: *Effective:* August 15, 2016.

ADDRESSES: *Docket:* You may view the public docket online at *http://www.regulations.gov* or in person at Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Ciccarone, (202) 366–8553, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: The FAST Act instructs the Secretary of Transportation to issue conforming regulatory amendments immediately or soon after the FAST Act's date of enactment (December 4, 2015). Because the actions taken in this final rule simply codify these non-discretionary statutory mandates, PHMSA finds that timely execution of agency functions would be impeded by the procedures of public notice that are normally required by the Administrative Procedure Act. Further, PHMSA sees no reason to delay regulatory action, as we are simply implementing the non-discretionary provisions contained in Sections 7304, 7305, and 7306 of the FAST Act. PHMSA finds that public notice is impracticable and is implementing these changes under the "good cause" exemption of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), thus amending the regulations without advance notice and opportunity for public comment.

Abbreviations and Terms

AAR	Association of American Railroads
APA	Administrative Procedure Act
CFR	Code of Federal Regulations
CPC	Casualty Prevention Circular
DOT	Department of Transportation
EA	Environmental Assessment
FAST Act	Fixing America's Surface Transportation Act of 2015
FR	Federal Register
FRA	Federal Railroad Administration
HHFT	High-Hazard Flammable Train
HMR	Hazardous Materials Regulations
HMT	Hazardous Materials Table

NEPA National Environmental Policy Act
NPRM Notice of Proposed Rulemaking
NPV Net Present Value
NTSB National Transportation Safety Board
OMB Office of Management and Budget
PG Packing Group
PHMSA Pipeline and Hazardous Materials Safety Administration
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RIN Regulation Identifier Number
RSI Railway Supply Institute
TDG Transportation of Dangerous Goods
U.S.C. United States Code

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I. Background

On May 8, 2015, PHMSA (also "we" or "us"), in consultation with the Federal Railroad Administration (FRA), published the final rule "Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains" (hereafter "HM–251 final rule"). The HM–251 final rule was an integral part of the Department's comprehensive approach to ensure the safe transportation of energy products. Specifically, the HM–251 final rule amended the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) by defining certain trains transporting large volumes of Class 3 flammable liquids as "high-hazard flammable trains" (HHFT) and imposing certain operational restrictions, such as speed restrictions, braking systems, and routing.[1] The HM–251 final rule also adopted requirements into the HMR for sampling and testing programs to ensure the proper classification of unrefined petroleum-based products transported under the HMR. Furthermore, the rule codified new tank car design standards—namely the DOT Specification 117 (DOT–117), DOT Specification 117P (DOT–117P), and DOT Specification 117R (DOT–117R)—and established a phase-out schedule for existing DOT Specification 111 (DOT–111) tank cars by requiring use of either a DOT–117, DOT–117P, or DOT–117R tank car by certain dates for the transport of Class 3 flammable liquids in an HHFT.[2] For more information on the HM–251 final rule, please refer to its publication in the **Federal Register** [80 FR 26643; May 8, 2015], as well as the information under Docket No. PHMSA–2012–0082 at the Federal eRulemaking Portal, *www.regulations.gov.*

On December 4, 2015, President Barack Obama signed legislation entitled "Fixing America's Surface Transportation Act of 2015," or the "FAST Act." *See* Public Law 114–94. The FAST Act includes the "Hazardous Materials Transportation Safety Improvement Act of 2015" (*see* Sections 7001 through 7311) and instructs the Secretary of Transportation (hereafter "Secretary") to make specific regulatory amendments to the tank car design standards and phase-out schedule codified in the HM–251 final rule.

A. Retrofit Schedule (FAST Act Section 7304)

Section 7304 of the FAST Act mandates a commodity-specific phase-out of all DOT–111 tank cars used to transport Class 3 flammable liquids. Specifically, paragraph (a) mandates the phase-out regardless of train composition and requires that, by the dates specified in paragraph (b), all tank cars used to transport Class 3 flammable liquids meet the DOT–117, DOT–117P, or DOT–117R requirements. Paragraph (b) of Section 7304 mandates a commodity-specific phase-out schedule for DOT–111 tank cars used to transport unrefined petroleum products and ethanol—irrespective of the Packing Group (PG)[3] assigned—as well as other Class 3 flammable liquids based on their PGs.

The phase-out schedule mandated in paragraph (b) outlines various compliance end-dates, on or after which the DOT–111 tank car (including DOT–111 tank cars built to the Association of American Railroads' (AAR) Casualty Prevention Circular 1232 standard (CPC–1232)) is no longer authorized to transport Class 3 flammable liquids. Please refer to Section III, "Section-by-Section Review," in this rule for more information on the applicable end-dates of the new phase-out schedule. See Table 1 below for a comparison of the retrofit schedule of the HM–251 final rule with the schedule imposed by the FAST Act:

TABLE 1—COMPARISON OF HM–251 TANK CAR PHASE-OUT SCHEDULE VS. FAST ACT PHASE-OUT SCHEDULE

[Tank cars in Class 3 flammable liquid service]

Tank car type/service	HM–251 phase-out deadline[4]	FAST Act phase-out deadline[5]
Non-jacketed DOT–111s	PG I—January 1, 2018[6]	Crude[7]—January 1, 2018
	PG II—May 1, 2023	Ethanol—May 1, 2023
	PG III—May 1, 2025	Flammable PG I—May 1, 2025**
		Flammable PG II/III—May 1, 2029*
Jacketed DOT–111s	PG I—March 1, 2018	Crude—March 1, 2018
	PG II—May 1, 2023	Ethanol—May 1, 2023
	PG III—May 1, 2025	Flammable PG I—May 1, 2025**
		Flammable PG II/III—May 1, 2029*
Non-jacketed CPC–1232s	PG I—April 1, 2020	Crude—April 1, 2020

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[1] The HM–251 final rule defined an HHFT as a train comprised of 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or 35 or more loaded tank cars of a Class 3 flammable liquid across the entire train.

[2] "DOT–117P" tank cars are newly manufactured tank cars or tank cars retrofitted to meet the performance criteria in § 179.202–12. "DOT–117R" tank cars are tank cars retrofitted to meet the retrofit standard in § 179.202–13.

[3] Packing Group (as defined in 49 CFR 171.8) is a grouping according to the degree of danger presented by hazardous materials. Packing Group I indicates great danger; Packing Group II, medium danger; Packing Group III, minor danger.

[4] Applies only to tank cars in an HHFT configuration.

[5] Applies to a single tank car containing the denoted commodity.

[6] If these cars are not retrofitted by January 1, 2017 the owners must file a report with the Department on the number of tank cars that they own that have been retrofitted and the number that have not yet been retrofitted.

[7] The FAST Act is applicable to "unrefined petroleum products in Class 3 flammable service, including crude oil." For the purposes of this phase out table, we use "Crude" for these materials.

TABLE 1—COMPARISON OF HM–251 TANK CAR PHASE-OUT SCHEDULE VS. FAST ACT PHASE-OUT SCHEDULE—Continued

[Tank cars in Class 3 flammable liquid service]

Tank car type/service	HM–251 phase-out deadline [4]	FAST Act phase-out deadline [5]
	PG II—July 1, 2023 PG III—May 1, 2025	Ethanol—July 1, 2023 Flammable PG I—May 1, 2025 ** Flammable PG II/III—May 1, 2029 *
Jacketed CPC–1232s	May 1, 2025	Crude oil—May 1, 2025 Ethanol—May 1, 2025 Flammable PG I—May 1, 2025 ** Flammable PG II/III—May 1, 2029 *

** Extendable up to May 1, 2027, if the Secretary finds that insufficient retrofitting shop capacity will prevent the phase-out of tank cars not meeting the DOT–117, DOT–117P, or DOT–117R by the deadline.

* Extendable up to May 1, 2031, if the Secretary finds that insufficient retrofitting shop capacity will prevent the phase-out of tank cars not meeting the DOT–117, DOT–117P, or DOT–117R by the deadline.

The requirements of Section 7304 of the FAST Act differ from the HM–251 final rule in two ways. First, the HM–251 final rule required Class 3 flammable liquids to be transported in DOT–117, DOT–117P, or DOT–117R tank cars only if these tank cars are used in an HHFT, whereas the FAST Act removed the linkage between tank car specification and train composition, instead mandating that any Class 3 flammable liquid be transported in a DOT–117, DOT–117P, or DOT–117R tank car by the dates specified. (The FAST Act does not change the HM–251 final rule's definition of HHFT as it applies to the operational controls specified in the rule.) Second, the phase-out schedule in the HM–251 final rule was based on the PG of the Class 3 flammable liquid, among other factors, whereas the phase-out schedule imposed by the FAST Act is commodity-specific for unrefined petroleum products (including crude oil) and ethanol and based on a commodity's PG only for other Class 3 flammable liquids.

Paragraph (d)(1)(A) of Section 7304 requires the Secretary to take immediate action to revise the date-specific deadlines in the HMR to align with those in the FAST Act. This rule responds to that mandate.

B. Thermal Protection Blanket (FAST Act Section 7305)

Section 7305 of the FAST Act requires tank cars built to meet the DOT–117 specification and each non-jacketed tank car retrofitted to meet the DOT–117R specification be equipped with an "insulating blanket" at least half inch thick and approved by the Secretary in accordance with 49 CFR 179.18(c). Paragraph (a) of § 179.18 requires tank cars required to be equipped with thermal protection to be equipped with a thermal protection system meeting a certain performance standard (*i.e.*, a pool fire for 100 minutes; and a torch fire for 30 minutes) and paragraph (b) contains the technical requirements for conducting a thermal analysis to verify a system's compliance with paragraph (a)'s performance standard. As paragraph (c) of § 179.18 indicates, the Department maintains a list of thermal protection systems already verified to meet the performance standard and for which completion of a thermal analysis is not required. PHMSA maintains the list and for a thermal protection system to be added to the list, a manufacturer must first conduct the qualification tests in Appendix B to Part 179 of the HMR. The manufacturer must then provide the test procedures and results to PHMSA, which in consultation with FRA reviews the submitted test procedures and results. If the agencies find that the tests and results demonstrate that the system meets the performance standard of paragraph (a), the thermal protection system is added to the referenced list of tank car thermal protection systems that do not require test verification.

PHMSA notes, that while the FAST Act refers to the blanket as an "insulating blanket," for the purposes of clarity within the HMR, PHMSA is using the term "thermal protection blanket." The FAST Act intends for the blanket to be designed and approved to withstand fire conditions as opposed to being "insulating material" that is designed solely to maintain the temperature of the lading during transportation and neither designed nor approved to withstand fire conditions.

The HM–251 final rule did not specifically require that these tank car specifications include a thermal protection blanket as part of the thermal protection system; rather, it required that the specification tank cars meet the performance standard specified in § 179.18 of the HMR, which requires that a tank car have sufficient thermal resistance so that there will be no release of tank car lading, except through the pressure relief device, when subjected to a pool fire for 100 minutes and a torch fire for 30 minutes. Section 179.18 does not require the use of a thermal protection blanket for a tank car that is required to be equipped with thermal protection, nor does it prohibit their usage, provided the thermal protection blanket meets the section's performance requirement. In drafting the HM–251 final rule, PHMSA and FRA projected that a thermal protection blanket would be the likely option chosen for a DOT–117 tank car to comply with the thermal protection requirement, and the use of thermal protection blankets is consistent with the HM–251 Regulatory Impact Analysis (RIA), which assumed the thermal blanket would be the method used to achieve the thermal protection requirements in 179.18.[8] Although PHMSA and FRA acknowledged that new alternate technologies to thermal protection blankets may become available for meeting the performance requirement of that rule, the analysis projected that thermal protection blankets would be the technology of choice and included their cost, along with the removal and replacement of jackets (for jacketed DOT–111 cars), in the retrofit costs.

The FAST Act takes a slightly different approach and instructs the Secretary to require a thermal protection blanket of at least ½-inch-thick material on both cars built to meet the DOT–117 standard and non-jacketed DOT–117R cars. This constitutes a prescriptive standard for a thermal protection blanket that meets the performance standard specified in § 179.18. This rule implements this statutory requirement in conformance with the FAST Act; therefore, a thermal protection blanket meeting § 179.18(c) is now a requirement for the DOT–117, as well as for the DOT–117R if the tank car undergoing retrofitting is non-jacketed.

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[8] *See* HM–251 Final Rule RIA, p. 172–173.

Paragraph (a) of Section 7305 requires the Secretary to amend the HMR to reflect these thermal protection requirements within 180 days of the FAST Act's enactment. This rule responds to that mandate.

C. Top Fittings Protection (FAST Act Section 7306)

Section 7306(a) of the FAST Act specifies minimum requirements for top fittings protection on tank cars built to meet the DOT–117R. The HM–251 final rule did not require top fittings protection as part of the DOT–117R retrofit requirement because the costs involved appeared to be greater than the expected safety benefits.[9] PHMSA noted in the preamble to the HM–251 final rule that a task force of the AAR Tank Car Committee was evaluating potential advancements in existing top fittings protections that could prove cost effective and, along with the FRA, urged industry to consider enhancements that would apply to both new and retrofitted tank cars.

The FAST Act outlines self-executing performance standards for protective housings and pressure relief valves and does not mandate a rulemaking for these requirements. However, the statutory language mandates minimum requirements for top fittings protections for the DOT–117R tank car not currently in the HMR. Codifying these statutorily-mandated minimum requirements in the HMR provides greater clarity for the regulated community and ensures that the HMR is consistent with the FAST Act.

D. International Harmonization

As a result of the FAST Act, the U.S. retrofit schedule for DOT–111 tank cars is more closely aligned with the schedule that Transport Canada has set.[10] Prior to the FAST Act, certain differences existed between the tank car provisions of the HMR and Transport Canada's corresponding Transportation of Dangerous Goods (TDG) Regulations. Specifically, in the HM–251 final rule, the U.S. retrofit schedule was based on several factors, including the Class 3 flammable liquid's PG assignment and tank car construction (*e.g.,* whether the tank car is jacketed or non-jacketed). However, the HM–251 final rule was not commodity-specific; the applicable phase-out date for DOT–111 tank cars transporting crude oil or ethanol in an HHFT could vary significantly depending on the material's PG assignment. For example, under the HM–251 final rule, tank cars transporting PG I crude oil in an HHFT would need to be retrofitted or newly manufactured DOT–117R, DOT–117P, or DOT–117 tank cars at an earlier date than tank cars in an HHFT transporting crude oil assigned to PG II or PG III. Moreover, per the HM–251 final rule, a train transporting crude oil or ethanol but not meeting the definition of an HHFT is not required to utilize retrofitted or newly manufactured tank cars conforming to the DOT–117R, DOT–117P, or DOT–117.

Conversely, Transport Canada implemented a phase-out schedule that was commodity-specific (in addition to consideration of tank car design factors). The TDG Regulations mandate that flammable liquid commodities identified as crude oil or ethanol cannot be transported in a TC/DOT–111 in accordance with Canada's phase-out schedule, irrespective of PG assignment. For example, in order to be used to transport crude oil, TDG Regulations require retrofit of a non-jacketed TC/DOT–111 tank car by Canada's first compliance date (May 1, 2017), regardless of the crude oil's PG assignment. Furthermore, under the TDG Regulations, the TC/DOT–117 applies to a single tank car. Transport Canada's TDG Regulations do not include a definition for an HHFT.

As mandated by the FAST Act, in this final rule, PHMSA is implementing a commodity-specific phase-out schedule for the transport of unrefined petroleum products and ethanol in DOT–111 tanks cars, irrespective of the PG assigned. Moreover, the FAST Act mandates the complete phase out of DOT–111 cars for flammable liquids, as opposed to just tank cars transported in HHFTs. Therefore, with respect to being commodity-specific and the applicability of the new standards to a single tank car, this final rule amends the HMR to further align with Transport Canada's corresponding TDG Regulations. There are, however, still some differences between the HMR and TDG Regulations related to tank car standards and the retrofit schedule. For additional discussion of international harmonization issues, please refer to Subsection K, "Executive Order 13609 and International Trade Analysis."

II. Good Cause Justification

PHMSA is issuing this final rule without an opportunity for public notice and comment as is normally provided under the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA authorizes agencies to dispense with certain notice and comment procedures if the agency finds good cause that they are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B). In this instance, PHMSA finds that there is good cause to dispense with notice and comment because it would be impracticable and unnecessary.

"Good cause" exists in impracticable situations when notice unavoidably prevents due and required execution of agency functions or when an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required by the APA. The FAST Act requirements covered in this rulemaking are all non-discretionary, and two of the three FAST Act sections addressed in this rulemaking are self-executing (*see* Sections 7304 and 7306). PHMSA's actions in this final rule merely codify in the HMR these FAST Act requirements based on the authority of the Secretary to implement the statute.[11] This final rule addresses congressional mandates that lay out specific requirements or instruct the Secretary to issue conforming regulatory amendments immediately or soon after the FAST Act's date of enactment. Given the statute's timeline for issuing conforming regulations, PHMSA finds that due and timely execution of agency functions would be impeded by the process of public notice and comment. As such, notice and comment procedures are "impracticable" within the meaning of the APA, 5 U.S.C. 553(b)(3)(B). Furthermore, in making these ministerial and technical amendments PHMSA is not exercising discretion in a way that could be informed by public comment. The FAST Act does not provide PHMSA the flexibility to withdraw, change or revise this rule in response to adverse public comment. As such, notice and comment procedures are "unnecessary" within the meaning of the APA, 5 U.S.C. 553(b)(3)(B).

This final rule is effective on the day of publication in the **Federal Register**. The APA requires agencies to delay the effective date of regulations for 30 days after publication, unless the agency finds good cause to make the regulations effective sooner. *See* 5 U.S.C. 553(d). In addition to the previously discussed good cause to publish this rulemaking without advance notice and opportunity for public comment to implement the specific and non-discretionary mandates of the FAST Act, PHMSA finds good cause to make the regulations effective prior to 30 days.

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[9] *See* HM–251 Final Rule, 80 FR at 26676.

[10] Transport Canada is the Canadian equivalent of DOT, with broad oversight authority for all modes of transportation, including the rail transportation of hazardous materials.

[11] The Secretary has delegated this authority to PHMSA. *See* 49 CFR 1.97.

The DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1979] provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment on regulations issued without prior notice. Per the criteria specified in this policy, PHMSA finds that providing an opportunity for public comment cannot reasonably be anticipated to result in the receipt of useful information. This rule simply implements certain non-discretionary measures of the FAST Act; therefore, PHMSA is unable to adjust the text of the rule to account for any public comment. Section 7304 (expanding the tank car requirements to all flammable liquids) and Section 7306 (requiring top fittings protection) are self-executing and do not technically require regulatory action; Section 7304 (adjusting the retrofit timeline) is non-discretionary and required immediately; and Section 7305 (requiring ½ inch thermal protection) is non-discretionary and required no later than 180 days from the FAST Act's enactment. Further, due to the non-discretionary nature of Sections 7304, 7305, and 7306 of the FAST Act, PHMSA is without authority to withdraw, change or revise this rule in response to adverse public comment. For these reasons, PHMSA is not providing an opportunity for public comment.

III. Section-by-Section Review

Part 173

Section 173.241

Section 173.241 provides the bulk packaging requirements for certain low hazard (*i.e.,* PG III) liquid and solid materials. Specifically, paragraph (a) provides the specifications of rail tank cars that may be used to transport hazardous materials when directed to this section by Column (8C) of the § 172.101 Hazardous Materials Table (HMT). To execute the mandate in Section 7304 of the FAST Act, in this final rule we are revising paragraph (a) to prohibit the use of DOT–111 tank cars (including CPC–1232 tank cars) for Class 3 (flammable liquid) material in PG III, regardless of whether the cars are in HHFT service, unless they meet the DOT–117P performance standard or the DOT–117R retrofit standard. The phase-out must occur by the date in Table 2:

TABLE 2—PHASE-OUT SCHEDULE FOR DOT–111 TANK CARS IN CLASS 3, PG III SERVICE *

Material	Jacketed or non-jacketed tank car	DOT–111 (including cars built to the CPC–1232 standard) not authorized on or after
Class 3, PG III (flammable liquid) material	Jacketed and Non-jacketed	May 1, 2029.

* **Note:** For unrefined petroleum products and ethanol, see Tables 3 and 4 below, as applicable.

Section 173.242

Section 173.242 provides the bulk packaging requirements for certain medium hazard (*i.e.,* PG II and III) liquid and solid materials. Specifically, paragraph (a) provides which specifications of rail tank cars may be used to transport hazardous materials when directed to this section by Column (8C) of the § 172.101 HMT. Consistent with the mandate in Section 7304 of the FAST Act, in this final rule we are revising paragraph (a) to prohibit the use of DOT–111 tank cars for Class 3 (flammable liquids) in PG II and III, regardless of whether the cars are in HHFT service, unless they meet the DOT–117P performance standard or the DOT–117R retrofit standard. The phase-out must occur by the dates in Table 3 according to material type and tank car design factors:

TABLE 3—PHASE-OUT SCHEDULE FOR DOT–111 TANK CARS IN CLASS 3, PG II AND III SERVICE

Material	Jacketed or non-jacketed tank car	DOT–111 Not authorized on or after	DOT–111 Built to CPC–1232 not authorized on or after
Unrefined petroleum products (e.g., crude oil) [12]	Non-jacketed	January 1, 2018	April 1, 2020.
	Jacketed	March 1, 2018	May 1, 2025.
Ethanol	Non-jacketed	May 1, 2023	July 1, 2023.
	Jacketed	May 1, 2023	May 1, 2025.
Other Class 3, PG II and III (flammable liquid) material (other than unrefined petroleum products or ethanol).	Jacketed and Non-jacketed	May 1, 2029	May 1, 2029.

Section 173.243

Section 173.243provides the bulk packaging requirements for certain high hazard (*i.e.,* PG I) liquids and dual hazard materials. Specifically, paragraph (a) provides which specifications of rail tank cars may be used to transport hazardous materials when directed to this section by Column (8C) of the § 172.101 HMT. Consistent with the mandate in Section 7304 of the FAST Act, in this final rule we are revising paragraph (a) to prohibit the use of DOT–111 tank cars for Class 3 (flammable liquids) in PG I, regardless of whether the cars are in HHFT service, unless they meet the DOT–117P performance standard or the DOT–117R retrofit standard. The phase-out must occur by the dates in Table 4 according to material type and tank car design factors:

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[12] Unrefined petroleum products refers to hazardous hydrocarbons that are extracted from the earth and have not yet been processed to such an extent that the properties of the product are known and consistent.

TABLE 4—PHASE-OUT SCHEDULE FOR DOT–111 TANK CARS IN CLASS 3, PG I SERVICE

Material	Jacketed or non-jacketed tank car	DOT–111 Not authorized on or after	DOT–111 Built to CPC–1232 not authorized on or after
Unrefined petroleum products (e.g., crude oil)	Non-jacketed	January 1, 2018	April 1, 2020.
	Jacketed	March 1, 2018	May 1, 2025.
Class 3, PG I (flammable liquid) (other than unrefined petroleum products).	Jacketed and Non-jacketed	May 1, 2025	May 1, 2025.

Part 179

Section 179.202–6

Section 179.202–6 requires a tank car built to meet the DOT–117 to have a thermal protection system. Consistent with the mandate in Section 7305 of the FAST Act, in this final rule we are revising this section to require that the thermal protection system include a thermal protection blanket with at least a ½-inch-thick material that meets § 179.18(c).

Section 179.202–11

Section 179.202–11 provides a table of specification requirements for the DOT–117 tank car. Consistent with the mandate in Section 7305 of the FAST Act, in this final rule we are revising the table to make clear that a thermal protection blanket (in accordance with § 179.202–6) is a requirement of the DOT–117 tank car.

Section 179.202–12

Section 179.202–12 provides the performance standards for a DOT–117P tank car. For greater understanding by the regulated community, in this final rule we are revising the heading of § 179.202–12 to more clearly indicate that the performance standard requirements apply to the DOT–117P tank car.

Section 179.202–13

Section 179.202–13 provides performance standards for retrofit of DOT–111 tank cars (*i.e.,* standards for a DOT–117R tank car). Consistent with the mandate in Section 7306 of the FAST Act, in this final rule we are revising the top fittings protection requirements in paragraph (h) to include minimum standards for the protection of pressure relief devices, valves, or fittings.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of Federal Hazardous Materials Transportation Law (49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal Hazmat Law authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

1. Background

As previously discussed, the HM–251 final rule amended the HMR by defining certain trains transporting large volumes of Class 3 flammable liquids as HHFTs and setting forth regulations (*i.e.,* speed restrictions, braking systems, and routing) for their operation. The HM–251 final rule also adopted into the HMR requirements for sampling and testing programs to ensure the proper classification of unrefined petroleum-based products. Furthermore, it codified new tank car design standards and established a phase-out schedule of legacy tank cars (*e.g.,* DOT–111 tank cars) by requiring use of either a DOT–117, DOT–117P, or DOT–117R specification tank car by certain dates for the transport of Class 3 flammable liquids in HHFTs.

The FAST Act instructs the Secretary to make specific regulatory amendments to the aforementioned tank car design standards and phase-out schedule codified in the HM–251 final rule. The FAST Act requirements addressed in this final rule are non-discretionary. This final rule revises the newly adopted regulations in the HM–251 final rule to align with the FAST Act. The specific amendments in this final rule are identified in Table 5 below and discussed briefly in the text that follows. Table 5 summarizes the affected population, costs, and benefits:

TABLE 5—SUMMARY OF AFFECTED POPULATION, COSTS, AND BENEFITS

Need and Basis for the Rule	Congressional Mandate: FAST Act provisions.
Applicability	Rail tank car manufacturers; tank car owners and lessors; railroad operators; shippers, offerors, and rail carriers.
Affected Population	19,757 Flammable Liquid Tank Cars. 73,374 Crude and Ethanol Tank Cars.
Total Costs (7% Discount)	$520 million.
Annualized Costs (7% Discount)	$49 million.
Costs (Qualitative)	Out-of-Service Time.
Benefits (Qualitative)	Improved puncture resistance. Increased thermal survivability. Enhanced protection of top fittings.

Retrofit Schedule

The FAST Act instructs the Secretary to make specific regulatory amendments to the tank car design standards and phase-out schedule established by the HM–251 final rule. Section 7304 of the FAST Act mandates a phase-out of all DOT–111 tank cars used to transport flammable liquids, thereby requiring that these tank cars meet the DOT–117, DOT–117P, or DOT–117R in part 179 of title 49, regardless of train composition. This differs from the HM–251 final rule, which required flammable liquids previously transported in a DOT–111 tank car to be transported in a DOT–117, DOT–117P, or DOT–117R tank car only when these tank cars were configured as part of an HHFT.

Thermal Protection Blankets

Section 7305 of the FAST Act mandates that each tank car built to meet the DOT–117 and each non-jacketed tank car retrofitted to meet the DOT–117R be equipped with a thermal protection blanket of at least ½-inch-thick material that meets § 179.18(c) of the HMR.[13] Under the HM–251 final rule, a thermal protection blanket was not required, but it was an authorized means of providing the required thermal protection for a DOT–117 tank car and in the regulatory impact analysis it was assumed to be the means of compliance that likely would be used by manufacturers.

Top Fittings Protections

Section 7306 of the FAST Act specifies minimum requirements for top fittings protection on tank cars built to meet the DOT–117R—including a protective housing for the top fittings and the pressure relief device—and allows for an alternative protection system. The FAST Act outlines self-executing performance standards for top fittings protection requirements. Codifying these minimum requirements in the HMR provides clarity for the regulated community on the statutory requirements for top fittings.

Executive Orders

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) require agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” This final rule was mandated by congressional action, and the provisions in this action are non-discretionary.

Executive Order 13610 (“Identifying and Reducing Regulatory Burden”), issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies. DOT believes that streamlined and clear regulations are important to ensure compliance with important safety regulations. As such, DOT has developed a plan detailing how such reviews are conducted.[14]

This final rule is designated as economically significant, and was reviewed by the Office of Management and Budget (OMB). The final rule is considered a significant regulatory action under the Regulatory Policies and Procedures order issued by the DOT [44 FR 11034; February 26, 1979]. In this section, PHMSA addresses the economic impact of this final rule.

2. Need for Rule

The FAST Act instructed the Secretary to make specific regulatory amendments to the aforementioned tank car design standards and phase-out schedule established by the HM–251 final rule. The FAST Act changes adopted in this final rule are non-discretionary. Regardless, the need for the changes adopted in this final rule remains consistent with that in the HM–251 final rule and the HM–251 RIA. Specifically, both the HM–251 final rule and this final rule are designed to lessen the consequences of train accidents involving the unintentional release of flammable liquids. The purpose of the regulations for enhanced tank car standards is to prevent spills by keeping flammable liquids, including crude oil and ethanol, in rail tank cars and to mitigate the severity of incidents should they occur.

Finally, as previously explained, the requirements of Sections 7304, 7305, and 7306 of the FAST Act are non-discretionary and, in some cases, statutorily self-executing, thus superseding the recently published HM–251 final rule. It is good practice to adjust the HMR to align with the current statutory mandates. PHMSA seeks to reduce confusion within the regulated industries and other members of the public by eliminating inconsistency between the statutory mandates and existing regulatory mandates.

3. Baseline/Affected Entities

When examining the cost and budgetary impacts of the provisions in the FAST Act that revise the HM–251 final rule, PHMSA specifically focuses on the cost these changes will impose related to the baseline safety level set by the HM–251 final rule. In other words, the costs considered are only those that are new and add to the previous costs considered in the HM–251 RIA.

Both the HM–251 final rule and this final rule would impact PHMSA stakeholders, including rail tank car manufacturers; tank car owners and lessors; railroad operators; shippers, offerors, and rail carriers; companies that manufacture, transport, or use flammable liquids; and emergency responders. More specifically, owners and lessors of flammable liquid tank cars, shippers of flammable liquids, and railroads that transport flammable liquids would be affected by this rulemaking. Below is a summary of the affected entities for the specific actions adopted in this final rule. Specifically, for this analysis we look at the number of tank cars to gauge impact. We discuss the affected entities separately below because the number varies for each requirement.

Retrofit Schedule

Table 6 is derived from the HM–251 RIA (Table TC2). It represents PHMSA’s estimate of the number of DOT–111 and CPC–1232 tank cars that would need to be retrofitted for crude and ethanol service in HHFTs.[15]

TABLE 6—ESTIMATED QUANTITY OF DOT–111 TANK CARS IN NEED OF RETROFIT

Tank car type/service	Fleet size
Non-Jacketed DOT–111 tank cars in PG I service	11,637
Non-Jacketed DOT–111 tank cars in PG II service	18,493
Jacketed DOT–111 tank cars in PG I and PG II service	2,356
Non-Jacketed CPC–1232 tank cars in PG I and PG II service	15,895
Jacketed CPC–1232 tank cars in PG I, PG II service, and all remaining tank cars carrying PG III materials in an HHFT (pressure relief valve and valve handles).	24,933
Total	73,314

The FAST Act modifies the retrofit schedule, accelerating deadlines for unrefined petroleum products in PGII and relaxing the schedule for retrofitting DOT–111 tank cars transporting Class 3 flammable liquids other than unrefined petroleum or ethanol. These modifications to the schedule would neither affect the number of cars retrofitted nor the per unit cost of retrofits, instead only affecting the timing of the retrofits. As a result, the cost differential of this adjustment is a matter of the difference in the value of discounting a year or two for a subset of cars, which is negligible. For this analysis, we assume the same distribution of crude and ethanol tank cars as in Table 6 even though it could be argued that given the current economic conditions these numbers overestimate the needed tank car fleet.[16] Specifically, the number of tank cars in crude oil or ethanol service that need to be retrofit is likely an overestimate due to lower oil prices, expected future additions to the fleet, reduced tank car demand, an existing tank car surplus, decreased fleet utilization rates, and decreased leasing rates. The Progressive Railroading article cited above notes recent changes in the market for tank cars, driven primarily by a substantial drop in crude oil prices, including that tank car utilization has gone from near 100 percent utilization in June of 2014 to 77 percent utilization in 2015, has resulted in a surplus of 80,000 tank cars. Orders for new tank cars have dropped significantly and the current tank car surplus indicates that unless energy prices rebound, tank car utilization will be well below 100 percent, meaning that fewer cars will be needed to haul crude oil than the industry predicted in 2014. In addition, the AAR weekly rail traffic report from May 7, 2016, noted U.S. Class I railroads originated 63,261 carloads of crude oil in the first quarter of 2016, down 21,664 carloads or 25.5 percent from the fourth quarter of 2015 and down 49,828 carloads or 44.1 percent from the first quarter of 2015.[17]

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[13] The HM–251 final rule did not require that these tank car specifications include a thermal protection blanket as part of the thermal protection system, but rather required that the specification tank cars meet the performance standard specified in § 179.18.

[14] Department of Transportation’s plan for retrospective regulatory reviews is available online at: *http://www.dot.gov/regulations/dot-retrospective-reviews-rules.*

[15] This only includes crude and ethanol tank cars and assumes a 28 percent retirement rate.

In addition to modifying the retrofit schedule for crude and ethanol tank cars covered in the HM–251 final rule, the FAST Act requires all DOT–111 flammable liquid tank cars to meet the DOT–117/117R tank car specification based on a retrofit timeline. In comments and appeals to the HM–251 final rule, interested parties estimated that approximately 40,000 additional tank cars would need retrofitting if the retrofit requirements were expanded to all flammable liquids. On September 30, 2014, the Railway Supply Institute (RSI) provided a fleet projection for the end of 2015 in their comments to the HM–251 NPRM docket. Table 7 summarizes the RSI projections:

TABLE 7—RSI PROJECTED FLAMMABLE LIQUIDS TANK CAR FLEET AS OF THE END OF 2015

Sub-fleet	Crude oil	Ethanol *	Other flammable liquids *
Non-jacketed DOT–111s	23,090	27,037	24,790
Jacketed DOT–111s	7,016	88	9,413
Non-jacketed CPC–1232s	21,993	751	2,944
Jacketed CPC–1232s	35,408	23	1,975
Totals	87,507	27,899	39,122

* **Note:** Ethanol and Other Flammable Liquids car counts are based on AAR counts of cars that shipped at least one carload of the commodity in question over the period from January 1, 2013 through April 30, 2014. If an individual car switched services during this period, that car will be counted as part of more than one fleet.

In the HM–251 Final Rule RIA, PHMSA assumed that all legacy tank cars would be either retrofit or retired. Retired cars were assumed to be scrapped rather than transferred to other service. The Agency also assumed that any new car built for crude and ethanol service would be a DOT–117 regardless of whether the car was to be used in manifest service or unit train service. The Agency did not assume that CPC–1232 cars would continue to be built for manifest crude and ethanol service. The Agency's reasoning was that any crude or ethanol car would probably end up in HHFT service at some point even if some portion of those commodities would be hauled by manifest trains. The figures in the Crude and Ethanol columns of Table 7 therefore represent the estimated size of the total crude and ethanol fleets, not just the portion of those fleets destined for HHFT service.

PHMSA will continue to evaluate the market conditions that drive industry decisions regarding the tank car fleet. Most recently, the tank car market has seen a growing tank car surplus, along with decreasing fleet utilization rates and decreased leasing rates.[18] [19] Furthermore, as stated in the note to Table 7, for "Other Flammable Liquids"[20] (OFL) the car counts are based on AAR counts of cars that shipped at least one carload of the commodity in question over the period from January 1, 2013 through April 30, 2014. This is the same approach to counting tank cars that was utilized in the HM–251 RIA. The concern is that if an individual car switched services (*e.g.,* from ethanol to another flammable liquid) during this period, that car would be counted as part of more than one fleet. In a February 29, 2016, letter to PHMSA, RSI reiterated the difficulty in formulating accurate tank car fleet estimates, particularly when tank cars are likely being shifted between different types of service.[21] As such, we believe that counting tank cars in this manner double counts an individual car if that car switched services during the period. Such double counting may be temporary, however. If the shipping demand increases for crude oil, switching between services may become much less prevalent.

Based on this discussion, PHMSA will continue to use the crude and ethanol fleet size estimated in the HM–251 RIA acknowledging that those tank car numbers may now be an overestimation. Regarding the additional flammable liquid tank cars that are included in the scope of this rule based on the FAST Act requirements, we are using the RSI estimate as a basis for determining the fleet size but are modifying it based on the factors discussed above (*i.e.,* potential double counting inflating the fleet estimate and falling demand for cars in crude oil service). We estimate the total OFL fleet size is between 20,000 to 30,000 tank cars. We arrived at this estimate by making two adjustments: Remove the Canadian fleet, which was estimated to account for 25.7 percent of cars in the HM–251 final rule RIA (see page 80); and, reduce the remaining U.S. fleet by 10 percent to adjust for double counting due to switching service (as referenced in the note to Table 7 above).[22] This reduction puts the affected OFL fleet estimate in the middle of the 20,000–30,000 range (26,161 in table below). The estimates in Table 8 below were obtained by multiplying the figures in Table 7 by 0.743 (1 − 0.257 = 0.743) and 0.90 (1 − 0.10 = 0.90), sequentially. For the purposes of this analysis, we define the flammable liquid tank car population affected by these provisions as follows in Table 8.

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[16] Progressive Railroading Article: *http://www.progressiverailroading.com/rail_industry_trends/article/Outlook-2016-Rail-car-forecast-by-Richard-Kloster-46701.*

[17] *https://www.aar.org/newsandevents/Press-Releases/Pages/2016-05-11-railtraffic.aspx.*

[18] *See http://www.progressiverailroading.com/virtualmag/pr1215/files/14.html.*

[19] *See http://www.wsj.com/articles/demand-for-key-types-of-railway-cars-falls-amid-declining-output-1429908476.*

[20] "Other Flammable Liquids" means any material meeting the definition of a flammable liquid as defined in §§ 172.120 and 173.121 excluding those classified under proper shipping names related to crude and ethanol.

[21] See [insert RSI letter into the docket].

TABLE 8—PHMSA PROJECTED FLAMMABLE LIQUIDS TANK CAR FLEET USED FOR FAST ACT COST DETERMINATION

Sub-fleet	Other flammable liquids
Non-jacketed DOT–111s	16,577
Jacketed DOT–111s	6,294
Non-jacketed CPC–1232s	1,969
Jacketed CPC–1232s	1,321
Total	26,161

PHMSA uses the fleet estimates for OFL in Table 8 as the basis for the cost estimates related to OFL in this rule. While the HM–251 final rule requirements captured OFL that were transported in an HHFT configuration, PHMSA did not expect OFL to be transported in HHFT service therefore no costs or benefits were assigned to those materials in the HM–251 RIA. The key difference between the HM–251 final rule and the FAST Act requirements that are being adopted in this action is that the latter covers all flammable liquid cars regardless of train composition. Therefore, these tank cars are considered in this analysis and will require full retrofits—including not just top fittings protection and thermal protection blankets, but also full height head shields, full jackets, improved bottom outlet valve handles, and high capacity pressure relief valves—to meet the FAST Act requirement that all flammable liquid cars meet the DOT–117R.

Thermal Protection Blankets

The FAST Act requires that each tank car built to meet the DOT–117 and each non-jacketed tank car retrofitted to meet the DOT–117R be equipped with an "insulating blanket," which as clarified above, we have defined here to mean a thermal protection blanket. This requirement is consistent with the assumptions made for meeting the DOT–117R in the HM–251 RIA. Although PHMSA acknowledged that new alternate technologies to existing thermal protection blankets may become available for meeting the performance requirement of that rule, we assumed that the jacketed CPC–1232 cars were equipped with a thermal protection system meeting § 179.18 and there was no associated retrofit cost. Thus, for crude and ethanol cars, thermal protection blanket costs are already accounted for; hence, this FAST Act requirement does not add additional costs for these cars. Neither the FAST Act nor these complying regulations require jacketed cars to be retrofitted with thermal protection, so associated costs would not be borne regardless of the assumptions made in the HM–251 rulemaking analysis.

Section 7305(b) of the FAST act provides a savings clause that states "[n]othing in this section shall prohibit the Secretary from approving new or alternative technologies or materials as they become available that provide a level of safety at least equivalent to the level of safety provided for under subsection (a)." As the regulatory text is written, the prescriptive standards for thermal protection blankets are applied for new DOT–117 and DOT–117Rs. The section related to DOT–117Ps is not revised thus if an entity were able to provide a design that exceeded the prescriptive standard for a thermal protection blanket in the FAST act and FRA were to approve that design as a DOT117P they could innovate.

The thermal protection blanketing provision will only affect those non-jacketed flammable liquid cars in need of retrofit. Specifically, we estimate 18,546 tank cars (comprised of the non-jacketed legacy DOT–111 and non-jacketed CPC–1232 tank cars in OFL service listed in Table 8) will be affected.

Top Fittings Protection

The HM–251 final rule did not require modification or addition of top fittings protections to meet the DOT–117R. The FAST Act requires enhanced top fittings protections for all retrofit cars. Tank cars built to the CPC–1232 industry standard are already equipped with top fittings protections; therefore, this new cost only applies to legacy DOT–111 tank cars transporting crude oil and ethanol, as well as those transporting OFL that are now included in our scope per the FAST Act. In total, we estimate 55,357 tank cars (13,905 crude tank cars, 18,581 ethanol tank cars, and 22,871 OFL tank cars) will be affected (see Tables 6 and 8, above).

4. Summary of Costs

PHMSA applies the same retrofit costs that were applied in the HM–251 RIA to all cars being retrofitted (all CPC–1232 tank cars and the DOT–111 tank cars that are not retired). The unit retrofit costs used in the HM–251 RIA are applied to OFL tank cars, along with the estimated cost of installing top fittings protection. The unit costs, including out-of-service time, were estimated at $38,923 for a non-jacketed DOT–111 tank car.[23] The addition of top fittings protection raises this cost to $43,508. For a jacketed DOT–111 tank car, the unit cost of retrofitting in the HM–251 RIA was $28,123. With top fittings protection, this cost rises to $32,708 per car. PHMSA assumes these cars will be retrofitted in the final 5 years of the allowed timeframe (*i.e.,* between 2025 and 2029). Table 10 describes the cost and modifications needed by fleet and tank car type. PHMSA estimates that 76 percent of the total costs of the FAST Act tank car retrofit requirements accrue to the non-jacketed DOT–111 tank cars. In addition, we apply a $4,585 per car cost to account for the cost of enhancing top fittings protection on the legacy DOT–111 tank cars (both jacketed and non-jacketed).[24] The per unit cost for each tank car type is listed below in Table 10 below.

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[22] Starting with the RSI data in Table 7, we sequentially take out 25.7% to remove the Canadian fleet and then take out 10% of the remainder to adjust for double counting due to switching service.

[23] Given the decrease demand for DOT–111 tank cars since the publication of HM–251 final rule, costs associated with out-of-service time may be lower than originally estimated due to underutilization of the fleet.

[24] See RSI letter to PHMSA [add link to docket].

Retirements

As noted above, we assume that 28 percent of OFL tank cars would be retired rather than retrofit. For the HM–251 RIA virtually all retirements were forced early retirements because the retrofit timeline was aggressive, especially for legacy DOT 111 tank cars. The FAST Act deadline is substantially more lenient, and as a result, the Agency believes it appropriate to consider natural retirements as well as forced early retirements. We use the fleet age profile used in the 2015 HM–251 RIA to estimate retirement costs to identify the number of cars in each year from 2016 to 2028 that would reach the end of their useful life. We then assume that the remainders of the 28 percent of retired cars are forced to retire in 2029. Given the longer time horizon for FAST Act compliance the Agency believes this treatment is appropriate. Natural retirements will occur over the nearly decade and a half, and tank car lessors and operators will have more time to plan for moving some of the fleet that is not worth retrofitting into other service rather than scrapping the cars.

We conduct this analysis by assuming, absent FAST Act requirements, that a retired non-jacketed DOT–111 tank car would be replaced with a non-jacketed CPC–1232 and a retired jacketed DOT–111 tank car would have been replaced with a jacketed CPC–1232 tank car. In addition, we assume that industry would have built improved CPC–1232 tank cars for OFL service—with pressure relief valves (PRVs) and bottom outlet valve (BOV) handles that would meet DOT–117 requirements. The non-jacketed cars would (obviously) not have jackets, but would have a 1/2 inch shells and half height head shields. The jacketed cars would have 7/16 inch shells and jackets with thermal protection and top fittings protection. The only difference between these cars and a DOT–117 tank car is an eighth of an inch of shell thickness, which PHMSA estimates to be a $3,000 higher cost for the DOT–117 tank car compared to a jacketed CPC–1232 tank car in the HM–251 Final Rule RIA.[25]

As we found in the development of the HM–251 final rule analysis, tank car purchase prices are difficult to obtain. One way to approximate them is to use modified retrofit costs for upgrading a car from one type to another. As noted, the cost difference between a DOT–117 and a jacketed CPC–1232 is approximately $3,000, because the only difference between the two cars is the thickness of the tank shell. The differential for a non-jacketed CPC–1232 is more complicated because it lacks several components found on the jacketed car. However, the unjacketed CPC–1232 has a thicker shell (1/2 inch rather than 7/16 inches) than the unjacketed CPC–1232 and would therefore only need sixteenth of an inch of shell thickness ($1,500). The non-jacketed CPC–1232 also has half height head shields. To be fully upgraded to the DOT–117 standard, the required additions would be a jacket with full height head shields (rather than half height), thermal protection, and a sixteenth of an inch of shell thickness. The retrofit costs for a non-jacketed CPC–1232 are presented below as a starting point for a new car differential. PHMSA modifies these by:

- Eliminating costs of the BOV and PRV, under the assumption that when done at the manufacturing stage swapping out one part for another would have minimal cost;
- Subtracting $1,000 from the cost of a jacket and head shields to account for repurposing the steel that would have been used for the non-jacketed CPC–1232 half height head shield into half of a full height head shield;
- Adding $1,500 to increase the shell thickness by a sixteenth of an inch (half the cost of increasing the shell thickness of a CPC–1232 by an eighth of an inch); and,
- Increasing the learning curve efficiency to 15 percent because manufacturing efficiencies for new builds should be greater than for retrofits.[26]

TABLE 9—RETROFIT COSTS FOR THE NON-JACKETED, DOT CPC–1232NJ (OPTION 3 TANK CAR) AND NEW CAR DIFFERENTIAL ESTIMATE

Retrofit option	Retrofit cost from HM–251	New car differential cost
Bottom outlet valve handle retrofit cost	$1,200	NA
Pressure relief valve retrofit cost	$1,500	NA
Thermal protection retrofit cost	$4,000	$4,000
Full jacket retrofit cost with half height head shields	$23,400	$22,400
Extra shell thickness	NA	$1,500
Unadjusted Total	$30,100	$27,900
Learning curve cost reduction	10%	15%
Adjusted Total	$27,090	$23,715

This yields a car cost differential of $23,715 between a non-jacketed CPC–1232 tank car and a DOT–117 tank car. We apply this cost to natural retirements to reflect the differential cost between purchasing a non-Jacketed CPC–1232 and a DOT–117. For jacketed DOT–111s that age out of the fleet, we use the cost differential between a jacketed CPC–1232 and a DOT–117 ($3,000). For early retirements, we use the car cost differential plus the cost of having to buy a new DOT–117 earlier than planned—$20,649 for a non-jacketed early retirement and $16,716 for a jacketed car.

We also reassessed the cost of early retirements, which is dependent on the average remaining service life for the cars retired early. For the HM–251 rule this average was 1.9 years for non-jacketed DOT–111s and 1.3 years for jacketed DOT–111s. Due to the overall DOT–111 age distribution, the cars retired for OFL service have a higher average remaining life. For non-jacketed DOT–111s the average is 2.87 years of remaining life, and for jacketed DOT–111s the average is 2.28 remaining years of life.[27] This raises the early retirement cost for both car types to those presented in Table 10 below. A summary of all OFL cost parameters are presented below.

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[25] We assume that these cars would have been built with HM–251 conforming pressure relief valves (PRV) and bottom outlet valve handles (BOV) and FAST Act conforming top fittings protection. We assume that adding better PRV and BOV handle would not add appreciably to the cost of a car when done at the manufacturing stage. As noted above, all CPC–1232 tank cars are built with conforming top fittings protection so that assumption carries through here.

[26] Because components can be added in the most logical and time efficient sequence during the manufacturing process. With the retrofit process certain components may have to be removed to apply thermal protection and a jacket and then reattached.

TABLE 10—UNIT COSTS FOR FAST ACT REQUIREMENTS, OTHER FLAMMABLE LIQUIDS FLEET

Sub-fleet	HM–251 retrofit cost	Top fittings protection cost	Total cost per car
Non-jacketed DOT–111	$38,923	$4,585	$43,508
Jacketed DOT–111	28,123	4,585	32,708
Non-jacketed CPC–1232	28,034	0	28,034
Jacketed CPC–1232	3,374	0	3,374
Non-jacketed DOT–111 Scheduled Retirement			23,715
Jacketed DOT–111 Scheduled Retirement			3,000
Non-jacketed DOT–111 Early Retirement			44,364 (23,715 + 20,649)
Jacketed DOT–111 Early Retirement			19,716 (16,716 + 3,000)

These unit costs are applied to the fleet figures presented in the Table 11 below. For retirements, the cost of natural retirements is applied to the figures in the columns showing retirements for years 2016–2028. Early retirement costs are applied to the 2029 figures in the columns showing retirements. Retrofit costs are estimated by applying the retrofit unit costs above to the corresponding car-type retrofit column in the table below.

TABLE 11—TYPE OF FLAMMABLE LIQUID RETROFIT AND RETIREMENTS BASED ON FAST ACT REQUIREMENTS *

	Retrofit non-jacketed DOT 111	Retrofit jacketed DOT–111	Retrofit non-jacketed CPC 1232	Retrofit jacketed CPC 1232 J	Retire non-jacketed 111	Retire jacketed DOT–111
Baseline	16,577	6,294	1,969	1,321	26,161	
Baseline adjusted for retirements **	11,935	4,532	1,969	1,321	4,642	1,762
2016					384	146
2017					261	99
2018					202	77
2019					101	38
2020					129	49
2021					156	59
2022					93	35
2023					156	59
2024					318	121
2025	2,387	906	394	264	374	142
2026	2,387	906	394	264	291	110
2027	2,387	906	394	264	220	84
2028	2,387	906	394	264	202	77
2029	2,387	906	394	264	1,755	666

* FAST Act other flammable liquid retrofit requirements start in 2025 and end in 2029.
** Total of years for each type.

Total cost estimates are presented in Table 12 below. These costs are obtained by applying the unit costs in Table 10 to the fleet figures in Table 11.

TABLE 12—ANALYSIS OF COSTS FOR OTHER FLAMMABLE LIQUID RETROFIT AND RETIREMENTS FOR FAST ACT REQUIREMENTS *

Year	Retrofit non-jacketed 111	Retrofit jacketed 111	Retrofit CPC non-jacketed 1232	Retrofit jacketed CPC–1232	Retire non-jacketed DOT–111	Retire jacketed DOT–111	Total cost
2016	$0	$0	$0	$0	$9,106,560	$438,000	$9,544,560

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[27] Years of remaining service life were calculated in the same manner as the HM–251 RIA (See pages 162–163). Due to the differing age distributions of the OFL fleet compared to the crude and ethanol fleets the average remaining life is higher for OFL.

TABLE 12—ANALYSIS OF COSTS FOR OTHER FLAMMABLE LIQUID RETROFIT AND RETIREMENTS FOR FAST ACT REQUIREMENTS *—Continued

Year	Retrofit non-jacketed 111	Retrofit jacketed 111	Retrofit CPC non-jacketed 1232	Retrofit jacketed CPC–1232	Retire non-jacketed DOT–111	Retire jacketed DOT–111	Total cost
2017	0	0	0	0	6,189,615	297,000	6,486,615
2018	0	0	0	0	4,790,430	231,000	5,021,430
2019	0	0	0	0	2,395,215	114,000	2,509,215
2020	0	0	0	0	3,059,235	147,000	3,206,235
2021	0	0	0	0	3,699,540	177,000	3,876,540
2022	0	0	0	0	2,205,495	105,000	2,310,495
2023	0	0	0	0	3,699,540	177,000	3,876,540
2024	0	0	0	0	7,541,370	363,000	7,904,370
2025	103,853,596	29,633,448	11,045,396	890,736	8,869,410	426,000	154,718,586
2026	103,853,596	29,633,448	11,045,396	890,736	6,901,065	330,000	152,654,241
2027	103,853,596	29,633,448	11,045,396	890,736	5,217,300	252,000	150,892,476
2028	103,853,596	29,633,448	11,045,396	890,736	4,790,430	231,000	150,444,606
2029	103,853,596	29,633,448	11,045,396	890,736	77,858,820	13,130,856	236,412,852
					Non-discounted Total		889,858,761
					NPV 7% Discount Rate		405,750,881
					NPV 3% Discount Rate		629,195,653

* FAST Act other flammable liquid retrofit requirements start in 2025 and end in 2029.

For the cars already accounted for in the HM–251 RIA, the only additional cost is to modify top fittings protection for the DOT–111 tank cars. As previously stated, PHMSA assumed in the HM–251 RIA that thermal protection blankets would be used to satisfy the thermal protection requirements in the HM–251 final rule and acknowledges that tank cars built to the CPC–1232 standard are equipped with top fittings protection meeting the requirements of the FAST Act. As mentioned above, we assume a unit cost of $4,585 per car for this modification. Table 13 presents the costs of further modifying these cars. Again, discounted NPV is calculated by setting 2016 as year 1.

TABLE 13—COST FOR CRUDE AND ETHANOL RETROFIT BASED ON FAST ACT REQUIREMENTS

Year	Non-jacketed DOT–111	Jacketed DOT–111	Total
2016	$20,233,605	$0	$20,233,605
2017	33,122,040	3,287,445	36,409,485
2018	0	7,225,960	7,225,960
2019	0	0	0
2020	22,938,755	0	22,938,755
2021	40,068,315	0	40,068,315
2022	23,273,460	288,855	23,562,315
2023	90,554	0	90,554
Non-discounted Total	139,726,729	10,802,260	150,528,989
NPV 7%	105,440,453	8,949,802	114,390,255
NPV 3%	123,203,667	9,946,375	133,150,042

As summarized in Table 14, total discounted costs for all provisions are about $520 million over 20 years at a 7 percent discount rate and $762 million at a 3 percent discount rate. The potential benefits of these changes are discussed further below.

TABLE 14—TOTAL COSTS OF FAST ACT REQUIREMENTS (20 YEAR AND ANNUALIZED)

Cost category	NPV 3%	NPV 7%
Cost for Crude and Ethanol Retrofit (20 Year)	$133,150,042	$114,390,255
Cost for Flammable Liquid Retrofit and Retirement (20 Year)	629,195,653	405,750,881
Total (20 Year)	762,345,695	520,141,136
Annualized Cost	51,241,605	49,097,644

PHMSA has made a number of assumptions regarding the cost of these requirements, including the following:

- Tanks cars built to the CPC–1232 industry standard are equipped with top fittings protection that conforms to the FAST Act requirement, and therefore would not need top fittings-related retrofits due to the FAST Act requirement.
- Adding new top fittings protection that conforms to the FAST Act would not add

significant weight to cars, and hence PHMSA does not estimate any additional track maintenance and fuel consumption costs for cars on which top fittings are modified.

- The analysis does not account for the fuel and track maintenance costs for the OFL tank car retrofits. These retrofits occur near the end of the 20-year analysis period; hence, any fuel and maintenance costs would only accrue for a few years and would be heavily discounted.
- The analysis assumes the same 28 percent retirement rate for OFL tank cars as was assumed for the crude and ethanol cars in the HM–251 RIA but considers both natural and forced early retirements.
- Adding top fittings protection would not affect the retirement decision (*i.e.*, adding top fittings protection to crude, ethanol, or OFL tank cars would not result in retirement of a higher proportion of these cars).
- The size of the crude oil fleet remains unchanged despite the recent drop in crude oil production and shipments by rail, which is expected to persist at least in the near term.
- OFL service cars would be replaced with a CPC–1232 in the absence of this regulation (and the Fast Act), since the rail industry supported plans to build jacketed CPC–1232 cars and began to build them for crude and ethanol service prior to the promulgation of the HM–251 final rule.[28] As a sensitivity analysis below, we assess costs assuming OFL service cars would be built to the higher DOT–117 standards promulgated in the HM–251 final rule in absence of this rule.

The estimated retrofit costs of the rule, by provision, are presented in Table 15 below. The costs in this table exclude retirement costs.

TABLE 15—ESTIMATED NON-DISCOUNTED COST BREAKDOWN OF THE FAST ACT TANK CAR RETROFIT REQUIREMENTS

Service type	Tank car type	Modification needed	Tank cars impacted[29]	Cost per tank car	Discounted[30] total cost (thousands)	% of total costs
Crude and Ethanol	Non-jacketed DOT–111	Thermal Blanket[31] Top Fittings Protection.	30,475	$4,585	$105,440,453	25
	Jacketed DOT–111	Top Fittings Protection	2,356	4,585	8,949,802	2
	Non-jacketed CPC–1232.	Thermal Blanket	15,895	NA	0	0
	Jacketed CPC–1232		24,993	NA	0	0
Flammable Liquid[32]	Non-jacketed DOT–111[33].	Tank Retrofit Thermal Blanket. Top Fittings Protection.	11,425	43,508	231,618,001	52
	Jacketed DOT–111[34]	Tank Retrofit Top Fittings Protection.	4,335	32,708	66,089,575	15
	Non-jacketed CPC–1232.	Tank Retrofit Thermal Blanket.	1,885	28,034	24,633,837	6
	Jacketed CPC–1232	Tank Retrofit	1,265	3,374	1,986,551	0.4

5. Sensitivity Analysis of Costs

In the above analysis, the cost applied to early retirements is based on the industry continuing to build CPC–1232 cars (both jacketed and unjacketed) for OFL service. Industry could also build to the higher DOT–117 standards when replacing retired OFL service cars. We consider an alternative cost analysis that assumes industry voluntarily replaces retired legacy cars with DOT–117s based on the following:

- The industry was already ordering DOT–117 tanks cars for crude and ethanol service prior to publication of the final rule.[35]
- Replacing retired cars with a DOT–117 tank car would enable tank car owners and leasers to switch cars between crude, ethanol, and OFL service, thereby ensuring fuller utilization in periods where demand wanes in one segment of the industry and demand in another service is high.

This sensitivity analysis assumes that natural retirements are replaced with DOT–117s at no additional cost and costs applied to early retirements are the costs associated with buying a car earlier than planned. The unit costs associated with this sensitivity analysis are presented in Table 16 below.

TABLE 16—UNIT COSTS USED IN SENSITIVITY ANALYSIS OF FAST ACT REQUIREMENTS, OTHER FLAMMABLE LIQUIDS FLEET

Sub-fleet	HM–251 retrofit cost	Top fittings protection cost	Total cost per car
Non-jacketed DOT–111	$38,923	$4,585	$43,508
Jacketed DOT–111	28,123	4,585	32,708
Non-jacketed CPC–1232	28,034	0	28,034

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[28] Jacketed CPC–1232 tank cars have been built for OFL service. PHMSA estimates that approximately 2,000 of these tank cars are currently used in this service on a quarterly basis. See also American Chemistry Council (ACC) comments from 2014 at *https://www.regulations.gov/document?D=PHMSA-2012-0082-0219*. ACC stated "that the chemical industry has been purchasing tank cars built to the CPC 1232 standard for several years and they support provisions that would require all new DOT 111 tank cars to meet the CPC 1232 standard with the exception of thermal protection. ACC noted that thermal protection should be considered a commodity specific addition that is not appropriate in all cases".

[29] Numbers are derived from Table 25 for crude and ethanol and Table 47 for flammable liquids from the RIA.

[30] These costs are NPV discounted at 7%.

[31] PHMSA assumed that to meet the performance standard specified in § 179.18 each tank car built to meet the DOT–117 specification and each non-jacketed tank car retrofitted to meet the DOT–117R specification would do so using a thermal protection blanket; thus no cost for thermal protection blankets is added for the fleet included in the HM–251 scope.

[32] Costs associated with retiring older OFL tank cars are not incorporated into this table, but are incorporated in the figures presented elsewhere in this section (see Table 11).

[33] Includes retirement costs.

[34] Includes retirement costs.

[35] See *http://www.railwayage.com/index.php/mechanical/freight-cars/tank-car-of-the-future-among-greenbrier-railcar-contracts.html*.

TABLE 16—UNIT COSTS USED IN SENSITIVITY ANALYSIS OF FAST ACT REQUIREMENTS, OTHER FLAMMABLE LIQUIDS FLEET—Continued

Sub-fleet	HM–251 retrofit cost	Top fittings protection cost	Total cost per car
Jacketed CPC–1232	3,374	0	3,374
Non-Jacketed DOT–111 Scheduled Retirement			0
Jacketed DOT–111 Scheduled Retirement			0
Non-jacketed DOT–111 Early Retirement			20,649
Jacketed DOT–111 Early Retirement			16,716

We applied these costs to the OFL fleet retrofit and retirement schedule presented above. Table 17 summarizes costs for the OFL fleet using the alternative baseline as a sensitivity analysis. Table 18 summarizes the total cost of the rule using the alternative baseline and includes costs associated with retrofitting the crude and ethanol fleet with top fittings protection. This sensitivity analysis found the cost of the rule to be about 12 percent less if industry were to build DOT–117 tank cars rather than CPC–1232 tank cars in absence of the FAST Act.

TABLE 17—SENSITIVITY ANALYSIS OF COSTS FOR FLAMMABLE LIQUID RETROFIT AND RETIREMENTS BASED ON FAST ACT REQUIREMENTS

Year	Retrofit non-jacketed 111	Retrofit jacketed 111	Retrofit CPC non-jacketed 1232	Retrofit jacketed CPC–1232	Retire non-jacketed DOT–111	Retire jacketed DOT–111	Total cost
2016	$0	$0	$0	$0	$0	$0	$0
2017	0	0	0	0	0	0	0
2018	0	0	0	0	0	0	0
2019	0	0	0	0	0	0	0
2020	0	0	0	0	0	0	0
2021	0	0	0	0	0	0	0
2022	0	0	0	0	0	0	0
2023	0	0	0	0	0	0	0
2024	0	0	0	0	0	0	0
2025	103,853,596	29,633,448	11,045,396	890,736	0	0	145,423,176
2026	103,853,596	29,633,448	11,045,396	890,736	0	0	145,423,176
2027	103,853,596	29,633,448	11,045,396	890,736	0	0	145,423,176
2028	103,853,596	29,633,448	11,045,396	890,736	0	0	145,423,176
2029	103,853,596	29,633,448	11,045,396	890,736	36,238,995	11,132,856	192,795,027
					Non-discounted Total		774,487,731
					NPV 7% Discount Rate		342,699,585
					NPV 3% Discount Rate		541,748,518

TABLE 18—SENSITIVITY ANALYSIS OF COSTS FOR FAST ACT REQUIREMENTS (20 YEAR AND ANNUALIZED)

Cost category	NPV 3%	NPV 7%
Cost for Crude and Ethanol Retrofits (20 Year)	$133,150,042	$114,390,255
Cost for Other Flammable Liquid Retrofit and Retirement (20 Year)	541,748,518	342,699,585
Total Discount Cost (20-Year)	674,898,561	457,089,840
Annualized Cost	45,363,784	43,146,047

6. Summary of Benefits

The implementation of this final rule ensures that all Class 3 flammable liquids are packaged in tank cars meeting improved specifications, thus reducing the likelihood that a train transporting any volume of flammable liquids will release such liquids should it derail. This final rule also reduces the consequences of an incident should one occur by diminishing the number of tank cars likely to be punctured and the subsequent release of flammable liquids in a derailment. The goals of this rule are thus consistent with those of the HM–251 final rule. Specifically, both the HM–251 final rule and this final rule are designed to lessen the consequences of train accidents involving the unintentional release of flammable liquids. The main difference is that this rule is simply intended to align the HMR with the non-discretionary mandates of the FAST Act. The purpose of the regulations for enhanced tank car standards is to prevent spills by keeping flammable liquids, including crude oil and ethanol, in rail tank cars and to mitigate the severity of incidents should they occur. Below we qualitatively discuss the benefits of each requirement addressed in this rule individually and provide a final discussion of the combined benefits of the provisions.

Retrofit Schedule

The FAST Act mandates a new phase-out schedule for DOT–111 tank cars—including DOT–111 tank cars constructed to the CPC–1232 industry standard—used to transport unrefined petroleum products (*e.g.*, petroleum crude oil), ethanol, and other Class 3 flammable liquids, irrespective of train composition. We estimate that the FAST Act's phase-out schedule impacts approximately 25,000 tank cars. With regard to benefits, these 25,000 tank cars will realize improved puncture resistance, enhanced thermal survivability, and increased top fittings protection. While these 25,000 tank cars would not travel in large blocks of cars like HHFTs, they would see benefits in potentially avoiding releases.

Thermal Protection Blankets

The FAST Act mandates that each tank car built to meet the DOT–117 standard and each non-jacketed tank car retrofitted to meet the DOT–117R standard be equipped with a thermal protection blanket with at least ½-inch-thick material that meets § 179.18(c). In the HM–251 final rule, PHMSA required all cars in HHFT service be equipped with an 11-gauge jacket but did not require a particular thermal protection material or thickness, instead requiring that a thermal protection system (which includes a pressure relief device) meet the performance standard of § 179.18. Although PHMSA acknowledged that alternative technologies to thermal protection blankets exist (*e.g.*, intumescent paint) and that others may become available for meeting the performance requirement of that rule, PHMSA assumed that thermal protection blankets would be the technology of choice and proactively included their cost in the retrofit costs. Thus, for crude and ethanol cars, thermal protection blanket benefits are already accounted for; hence, this FAST Act requirement does not add additional retrofit benefits for these cars. The FAST Act does add thermal protection blankets to other tank cars used for OFL. Consequently the entire flammable liquid fleet will now realize benefits from this requirement.

A thermal protection blanket provides benefits in the form of thermal protection, which prevents the temperature of the tank car from reaching 800 °F, the temperature at which the shell becomes malleable and its mechanical properties degrade. At temperatures above 800 °F, the shell will thin as a result of the hoop stress caused by the increasing pressure in the tank. After a period of time with excessive pressure, the thinning wall will fracture and result in a failure of the tank.

As established in § 179.18 of the HMR, a thermal protection system serves to prolong the survivability of a tank exposed to a pool or torch fire by limiting the heat flux into the tank material and its lading, thereby delaying the increase of pressure in the tank. The National Transportation Safety Board (NTSB) has acknowledged that the absence of adequate thermal protection could lead to a higher likelihood of release and thermal tearing of tank cars.[36] Conversely, the presence of adequate thermal protection (*i.e.*, a thermal protection blanket) should lead to a lower likelihood of these events.

Top Fittings Protection

The HM–251 final rule did not require top fittings protections to meet DOT–117R. The FAST Act requires enhanced top fittings protection for all retrofitted cars. The top fittings protection consists of a structure of specific design requirements intended to minimize damage to the service equipment. Top fittings protection will minimize the shearing off of and damage to valves and fittings on the top of the tank car when involved in a derailment scenario. The NTSB has acknowledged that the absence of top fittings could lead to a higher likelihood of release.[37] The benefits of top fittings protection will now be realized by the entire flammable liquid fleet.

Combined and Quantified Benefits

The FAST Act mandates a new phase-out schedule for DOT–111 tank cars—including DOT–111 tank cars constructed to the CPC–1232 industry standard—used to transport unrefined petroleum products (*e.g.*, petroleum crude oil), ethanol, and other Class 3 flammable liquids, irrespective of train composition. In addition, the FAST Act mandates that each tank car built to meet the DOT–117 and each non-jacketed tank car retrofitted to meet the DOT–117R be equipped with a thermal protection material having a minimum ½-inch thickness that meets § 179.18(c). Furthermore, the FAST Act specifies minimum top fittings protection requirements for tank cars retrofit to meet the DOT–117R.

As previously mentioned, the HM–251 final rule required Class 3 flammable liquids to be transported in a DOT–117, DOT–117P, or DOT–117R tank car only if these tank cars were configured as part of an HHFT. The FAST Act instructed the Secretary to require that all Class 3 flammable liquids be transported in either a DOT–117, DOT–117P, or DOT–117R tank car, whether or not the flammable liquid is transported as part of an HHFT. Applying these requirements to individual tank cars expands the scope of the impacted tank cars, which will reduce the overall probability and quantity of a Class 3 hazardous liquid material release and will minimize the consequences of an incident should one occur, including deaths and injuries.

In the HM–251 RIA, PHMSA addressed the risks posed by unit trains or trains with large blocks of tank cars containing flammable liquids. The FAST Act modifies the retrofit schedule, accelerating deadlines for unrefined petroleum products in PGII and relaxing the schedule for retrofitting DOT–111 tank cars transporting Class 3 flammable liquids other than unrefined petroleum or ethanol. Consistent with the FAST Act, this rule requires that all tank cars used to transport Class 3 flammable liquids meet either the DOT–117, DOT–117P, or DOT–117R in part 179 of the HMR, irrespective of train composition.

Enhancing crude and ethanol tank cars with better top fittings protection, and all flammable liquid tank cars on manifest trains with top fittings protection, jackets, thermal protection systems, full height head shields, and better outlet valves, will reduce the likelihood of release in the event of a derailment. As a result, fewer car punctures and fewer releases of material will occur, thereby mitigating the associated damages. This rule is therefore expected to reduce the damages to society associated with release of Class 3 flammable liquids in rail transportation.

The benefits of applying these requirements to trains carrying large quantities of crude and ethanol (*i.e.*, HHFTs) were estimated in the HM–251 final rule RIA, though those estimated benefits do not include the benefit of improved top fittings protection for tank cars that are retrofit. As noted in that document, the estimated effectiveness rates do not include any benefits from additional top fittings protection, because those benefits are relatively small and uncertain and would apply only to new construction (HM–251 RIA page 184). As a result, we did not estimate benefits of top fittings protection for the cars and fleet covered in this final rule based on the prior HM–251 analysis. PHMSA focusses the following benefits discussion and estimation for this final rule on requirements for tank cars carrying flammable liquids on manifest trains only to comply with the 117, 117P, or 117R specification.

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[36] *http://www.ntsb.gov/safety/safety-recs/recletters/R-15-014-017.pdf.*

[37] *http://www.ntsb.gov/safety/safety-recs/recletters/R-12-005-008.pdf.*

PHMSA assumes the upgrades to the OFL cars produce identical effectiveness to those estimated in the HM–251 analysis for a comparable car upgrade—*i.e.* upgrading or replacing a non-jacketed DOT–111 would reduce the probability of release by an equivalent amount whether the car is hauling crude, ethanol, or some OFL. Given the variation of the properties of materials within this packing group this assumption may or may not be valid. Some materials may have different flash points or other properties that enhance or reduce risk, when compared to crude or ethanol. In addition, some of these products, such as acrylonitrile stabilized, if ignited, produce fumes or smoke while burning that is far more toxic than those produced by crude and ethanol. Thus, for some packing group 3 materials, a fire resulting from a release that is ignited may pose much higher risks of injury to nearby populations than a crude or ethanol fire would pose. OFL products, such as paint, may pose lower risk of injury to nearby populations than a crude or ethanol fire would pose.

Challenges and Data Limitations

The wide variety of materials within Packing Group 3 poses a challenge to monetizing benefits for OFL. There are over 500 Class 3 materials, and the properties of these materials vary widely. Although the flammable properties of these materials may be similar to crude and ethanol, the type and extent of contamination of the natural or human environment that results from accidental release may be completely different, depending on the commodity involved. In addition, even if the flammable properties of the liquids were identical, the average spill size of the incidents affected by this rule is substantially smaller than the average spill size of incidents involving HHFTs (7,027 gallons compared to 84,000 gallons). Given uncertainties about fixed and variable costs of spills, PHMSA may not be able to produce valid per gallon cost estimates for a roughly 7,000 gallon spill based on the HHFT rule estimates. We do not believe it is meaningful to use the per gallon spill cost estimates developed in the HM–251 analysis to monetize damages and costs of the releases affected by this rule since those estimates were based on research and data involving crude and ethanol spill damages. As a result, we do not monetize benefits for this final rule. We instead present a break-even analysis that identifies how large the per gallon cost or damage of a spill would need to be for this rule's benefits to equal its costs. We do this by estimating the likely number of events that may occur over the analysis period, the likely average size of these events, and by assuming that the mitigation of the size of events that will result if all OFL tank cars are upgraded to the DOT–117R standard or replaced with new DOT–117 cars is the same as the mitigation levels estimated in the HMR–251 final rule's regulatory impact analysis for tank cars used on HHFTs.

Incident History

PHMSA identified train derailments that involved OFL products over the last decade for which data is complete (2006–2015), and presents this data in the table below (ordered by date). This table presents the average release and damages reported in incident report forms. We found 54 events over the past ten years resulting in a total quantity released of 379,464 gallons. Based on this dataset, the average spill size is 7,027 gallons. This is much smaller than the average crude/ethanol spill, which was estimated at 83,602 gallons.

TABLE 18—SUMMARY OF CLASS 3 HAZARDOUS MATERIAL DERAILMENTS WITH RELEASE INVOLVING OTHER FLAMMABLE LIQUIDS, EXCLUDING CRUDE OIL AND ETHANOL

[2006–2015]

Year	Total number of incidents	Total gallons released	Average of quantity released (gallons)	Sum of reported damages ($) *
2006	3	124	41	$99,565
2007	11	117,300	10,664	6,465,335
2008	3	6,132	2,044	187,350
2009	6	17,350	2,892	1,416,713
2010	5	56,390	11,279	2,844,842
2011	4	28,339	7,086	1,575,490
2012	8	105,400	13,175	6,959,474
2013	8	13,703	1,713	10,842,912
2014	4	14,726	3,681	2,558,530
2015	2	20,000	10,000	263,476
Total	54	379,464	** 7,027	33,213,687

* Damages as reported on the DOT form 5800.1. It should be noted PHMSA did not have a record of any fatalities in this time period. These may not include all actual damages, such as costs to the environment and valuations for injuries.

** This average is calculated by totaling all release data and dividing by total number of incidents in the last 10 years (it is not the average of averages).

Forecasting Future Events

A valid way to predict the number of future derailment events would be to look at the rate of events per volume shipped, potentially also controlling for other factors, over a number of years and project that rate forward based on a forecast of future volume shipped. This was how PHMSA projected future derailments in the HM–251 RIA. However, PHMSA was not able to develop such a forecast for OFL due to resource and data limitations. We would need to map each commodity, in the table of derailments above, to the corresponding Waybill Sample Standard Transportation Commodity Code (STCC Code) in order to obtain the volume of Class 3 flammable liquids shipped by rail per year. In addition, while production forecasts for energy products are available, no such forecast is available for the vast majority of OFL products. Thus, even if PHMSA did estimate a volume-based incident rate, there is no future volume forecast to which this rate can be applied to obtain a forecasted number of events.

As a result, PHMSA uses a basic model to project future events: we calculate the number of events over 10 past years and project that ''rate'' forward for the 20-year analysis period. Specifically, we note that 54 events occurred over ten years. The 20-year analysis period is twice as long as the 10-year historic period evaluated, so PHMSA simply multiplies the 54 events by two to obtain an estimate of 108 future release events over 20 years. We spread these events equally over the 20-year analysis period at 5.4 releases per year.

Event Size and Total Annual Release Estimate

The 54 events analyzed produced a total quantity spilled of 379,464 gallons of product released, resulting in an average of 7,027 gallons of product released per incident. Combining this figure with the forecasted number of events above (5.4 releases per year) provides an estimated average annual volume of 37,946 gallons released per year (5.4 releases per year multiplied by 7,027 gallons per release). We note that one OFL incident involved a large number of injuries—56 requiring hospitalization and another 139 requiring treatment but no hospitalization—and this incident involved a release from a DOT–105 tank car. This incident was not included in the incident table above because the OFL product was not shipped in a DOT–111. A second event involving the same material, acrylonitrile stabilized, this time in a DOT–111, resulted in 4 non-hospitalized injuries. Such events are evidence of the wide variety of materials being shipped and the different risks they pose to human health and the environment. This particular substance is toxic in addition to being flammable, and hence produces toxic fumes when burned. As a result, medical attention is necessary to treat anyone exposed to the fumes released by fires involving this product. Although the typical release involving OFL is small, for some substances in this hazard class, the impacts on people and the environment may be substantially more severe than for crude and ethanol. For other products the impacts may be fairly benign.

Estimated Reduction in Quantity of OFLs Released

In order to estimate the reduction in product released as a result of upgrading OFL tank cars to the DOT–117R/117 standard, PHMSA followed the same procedure and used the same effectiveness rates used in the HM–251 analysis. We calculated the ratio of each car type upgraded by a given year as a percentage of the total OFL fleet. The table of these calculations is presented below.

TABLE 19—OTHER FLAMMABLE LIQUID FLEET UPGRADE SHARE BY CAR TYPE

Year	111NJ to 117R %	111J to 117R %	1232NJ to 117R %	1232J to 117R %	111NJ to 117 %	111J to 117 %
2016	0.00	0.00	0.00	0.00	1.47	0.56
2017	0.00	0.00	0.00	0.00	2.47	0.94
2018	0.00	0.00	0.00	0.00	3.24	1.23
2019	0.00	0.00	0.00	0.00	3.62	1.38
2020	0.00	0.00	0.00	0.00	4.12	1.56
2021	0.00	0.00	0.00	0.00	4.71	1.79
2022	0.00	0.00	0.00	0.00	5.07	1.92
2023	0.00	0.00	0.00	0.00	5.66	2.15
2024	0.00	0.00	0.00	0.00	6.88	2.61
2025	9.12	3.46	1.51	1.01	8.31	3.15
2026	18.25	6.93	3.01	2.02	9.42	3.57
2027	27.37	10.39	4.52	3.03	10.26	3.90
2028	36.50	13.85	6.02	4.04	11.04	4.19
2029	45.62	17.32	7.53	5.05	17.74	6.74
2030	45.62	17.32	7.53	5.05	17.74	6.74
2031	45.62	17.32	7.53	5.05	17.74	6.74
2032	45.62	17.32	7.53	5.05	17.74	6.74
2033	45.62	17.32	7.53	5.05	17.74	6.74
2034	45.62	17.32	7.53	5.05	17.74	6.74
2035	45.62	17.32	7.53	5.05	17.74	6.74

These figures are multiplied by the corresponding effectiveness rate as pulled from the HM–251 analysis, reproduced below.

TABLE 20—HM–251 EFFECTIVENESS RATES

	Percent
Effectiveness Rates, Enhanced Jacketed CPC	
111 non-jacketed to 1232 w jacket	45.9
CPC non-jacketed to jacketed	31.0
111 jacketed to CPC jacketed	37.6
CPC jacketed to CPC jacketed	1.0
Effectiveness Rates, New DOT–117	
111 non-jacketed to AAR 2014	50.4
CPC non-jacketed to AAR 2014	36.8
111 jacketed to AAR 2014	42.8

TABLE 20—HM–251 EFFECTIVENESS RATES

	Percent
jacketed 1232 to AAR 2014	16.2

As a reminder, a retrofit tank car cannot be equipped with a thicker shell, so the DOT 117R standard is the equivalent of a jacketed CPC–1232 with some modest improvements—specifically an improved high capacity pressure relief valve and a bottom outlet valve design that reduces the probability of damage during derailment. Therefore, legacy DOT–111 tank cars that are retrofit improve by the factor represented by the "Effectiveness Rates, Enhanced Jacketed CPC" rows in the table above. These effectiveness rates can be interpreted as reductions in the probability that a tank car will release in a derailment, or the reductions in the expected amount of release product in a derailment. For cars that are retired and replaced with a new tank car, the effectiveness rates includes all the retrofit components—jacket, thermal protection, full height head shields, etc., but also an increase in shell thickness to 9/16", which further reduces the probability of release. A retired and replaced tank car therefore experiences the higher effectiveness rate presented in the "Effectiveness Rates, New DOT–117" rows in the table above. The products of the upgrade shares by type and the effectiveness rates are summed across rows to obtain an effectiveness rate for the OFL fleet upgrades. The individual effectiveness products and total effectiveness rate are produced in the table below.

TABLE 21—TOTAL EFFECTIVENESS RATES BY CAR TYPE AND TYPE OF UPGRADE *

Year	111NJ to 117R %	111J to 117R %	1232NJ to 117R %	1232J to 117R %	111NJ to 117 %	111J to 117 %	Total effectiveness %
1	0.00	0.00	0.00	0.00	0.74	0.24	0.98
2	0.00	0.00	0.00	0.00	1.24	0.40	1.64
3	0.00	0.00	0.00	0.00	1.63	0.53	2.16
4	0.00	0.00	0.00	0.00	1.83	0.59	2.42
5	0.00	0.00	0.00	0.00	2.07	0.67	2.74
6	0.00	0.00	0.00	0.00	2.38	0.77	3.14
7	0.00	0.00	0.00	0.00	2.55	0.82	3.38
8	0.00	0.00	0.00	0.00	2.86	0.92	3.77
9	0.00	0.00	0.00	0.00	3.47	1.12	4.59
10	4.19	1.30	0.47	0.01	4.19	1.35	11.51
11	8.38	2.60	0.93	0.02	4.75	1.53	18.21
12	12.56	3.91	1.40	0.03	5.17	1.67	24.74
13	16.75	5.21	1.87	0.04	5.56	1.79	31.22
14	20.94	6.51	2.33	0.05	8.94	2.88	41.66
15	20.94	6.51	2.33	0.05	8.94	2.88	41.66
16	20.94	6.51	2.33	0.05	8.94	2.88	41.66
17	20.94	6.51	2.33	0.05	8.94	2.88	41.66
18	20.94	6.51	2.33	0.05	8.94	2.88	41.66
19	20.94	6.51	2.33	0.05	8.94	2.88	41.66
20	20.94	6.51	2.33	0.05	8.94	2.88	41.66

* Some values may not total due to rounding.

The overall effectiveness rate for upgrading the OFL fleet is higher than that estimated for the crude and ethanol fleet. CPC–1232s make up a smaller portion of the OFL fleet than the crude and ethanol fleet and upgrading legacy DOT–111s produces a greater estimated reduction in the quantity of product released than the more marginal improvements to CPC–1232 cars. However, the retrofit schedule for the OFL fleet is less aggressive than the schedule for the crude and ethanol fleet, and the quantity of product released in these incidents is likely to be much smaller than is typical of crude and ethanol incidents. In the table below, the overall effectiveness rate for upgrading the OFL fleet is multiplied by the expected release quantity per year to obtain a yearly reduction in OFL material released.

TABLE 22—PREDICTED PREVENTED SPILL VOLUME *

Year	Number of events	Gallons released	Effectiveness	Reduction in gallons released **
1	5.4	37,946	0.98	371
2	5.4	37,946	1.64	624
3	5.4	37,946	2.16	819
4	5.4	37,946	2.42	917
5	5.4	37,946	2.74	1,041
6	5.4	37,946	3.14	1,192
7	5.4	37,946	3.38	1,282

TABLE 22—PREDICTED PREVENTED SPILL VOLUME *—Continued

Year	Number of events	Gallons released	Effectiveness	Reduction in gallons released **
8	5.4	37,946	3.77	1,432
9	5.4	37,946	4.59	1,740
10	5.4	37,946	11.51	4,366
11	5.4	37,946	18.21	6,911
12	5.4	37,946	24.74	9,388
13	5.4	37,946	31.22	11,848
14	5.4	37,946	41.66	15,809
15	5.4	37,946	41.66	15,809
16	5.4	37,946	41.66	15,809
17	5.4	37,946	41.66	15,809
18	5.4	37,946	41.66	15,809
19	5.4	37,946	41.66	15,809
20	5.4	37,946	41.66	15,809
Total				152,592

* Some values may not total due to rounding.

** These non-monetized estimates are not discounted. OMB and EPA guidelines discuss options for discounting non-monetized effects such as environmental damages to convey effects felt farther in the future are worth less in today's term than those occurred earlier in time (OMB Circular A–4, 2003, Page 36; and, EPA Guidelines for Preparing Economic Analyses, 2000, pages 52–54). The discounted 20-year total would be 56,317 gallons using a 7 discount rate.

The effectiveness rates for this rule are expected values, and the effect of the rule on any one release may vary widely from the average expected effect. Dividing the total 20-year reduction in gallons released into the total cost of the rule yields a "break-even" cost or damage per gallon figure of $3,409 (using total 20-year costs discounted at 7 or $520,141,136), meaning on average the monetized value of avoided damages from the reduction in gallons released from this rule would need to be about $3,409 per gallon in order for benefits to equal costs.[38] For some incidents, the tank car enhancements may eliminate release of the entire contents of the car. Also, we note that at least some of the substances affected by these upgrades pose a much higher immediate risk to human health compared to crude and ethanol. Reducing the likelihood of release of these materials would enhance public safety.

7. Conclusion

The FAST Act instructs the Secretary to make specific regulatory amendments to the aforementioned tank car design standards and phase-out schedule codified in the HM–251 final rule. Since the publication of the FAST Act on December 4, 2015, the text of the HMR differs with the explicit terms of the statute with respect to phase-out schedules, thermal protection blankets, and top fittings protections. The estimated net present value cost of these tank car upgrades is $520 million over 20 years discounted at 7 percent. The implementation of this final rule ensures that all Class 3 flammable liquids are packaged in tank cars meeting improved specifications, thus reducing the likelihood that a train transporting any volume of flammable liquids will release such liquids should it derail. This final rule also minimizes the consequences of an incident should one occur by diminishing the number of tank cars likely to be punctured and the subsequent release of flammable liquids in a derailment. It is necessary and in the public interest to clarify the requirements by rectifying the differences as soon as possible. PHMSA believes that APA notice and comment is unnecessary as it would provide no benefit to the public. Further, PHMSA has no discretion in interpreting the statute; thus public comment would have no impact on the rulemaking. Finally, with regard to Sections 7304 and 7305, the FAST Act instructs the Secretary to act quickly to codify the FAST Act language. Section 7306 has no regulatory mandate, but both PHMSA and FRA are committed to ensuring that the governing regulations align with the FAST Act requirements.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 ("Federalism"). This final rule does not impose any regulation that has substantial direct effects on States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. While the final rule could act to preempt State, local, and Indian tribe requirements by operation of law, PHMSA is not aware of any such requirements that are substantively different than what is required by the final rule. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101–5128, contains express preemption provisions (49 U.S.C. 5125) that preempt inconsistent State, local, and Indian tribe requirements, including requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This rule addresses items (2) and (5) described above and, accordingly, State, local, and Indian tribe requirements on these subjects that do not meet the "substantively the same" standard will be preempted.[39]

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[38] If we use the discounted total 20-year reduction in gallons released for this calculation (56,317 gallons using a 7 discount rate), then the rule yields a break-even cost per gallon figure of about $9,236, meaning that the monetized value of avoided damages from the reduction in gallons released from this rule would need to be about $9,236 per gallon in order for benefits to equal costs.

Federal Hazardous Materials Transportation Law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of a final rule and not later than two years after the date of issuance. The effective date of Federal preemption is November 14, 2016. This effective date for preemptive effect should not conflict with the overall effective date for this final rule because the regulation of hazardous materials transport in commerce generally preempts State and local requirements. Historically, the States and localities are aware of this preemptive effect and do not regulate in conflict with Federal requirements in these situations.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that have tribal implications. Because this final rule does not have tribal implications, the funding and consultation requirements of Executive Order 13175 do not apply.

PHMSA is committed to tribal outreach and engaging tribal governments in dialogue. Among other outreach efforts, PHMSA representatives attended the National Joint Tribal Emergency Management Conference on August 11–14, 2015. In the spirit of Executive Order 13175 and consistent with DOT Order 5301.1, PHMSA will be continuing outreach to tribal officials independent of our assessment of the direct tribal implications.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

Section 603 of the Regulatory Flexibility Act (RFA) requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553 to publish a general notice of proposed rulemaking for any proposed rule. Similarly, Section 604 of the RFA requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after being required to publish a general notice of proposed rulemaking. Because the actions taken in this final rule address congressional mandates that instruct the Secretary to issue conforming regulatory amendments immediately or soon after the FAST Act's date of enactment, PHMSA finds that due and timely execution of agency functions would be impeded by the procedures of public notice that are normally required by the APA. Therefore, PHMSA finds that public notice and comment would be contrary to the public interest and that good cause exists to amend the regulations without such procedures. As prior notice and comment under 5 U.S.C. 553 are not required to be provided in this situation, the analyses in 5 U.S.C. 603 and 604 are also not required.

F. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $155 million or more, adjusted for inflation, to either State, local, or tribal governments, in the aggregate, or to the private sector in any one year.

G. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the environmental impacts of proposed actions in their decisionmaking. On May 8, 2015, PHMSA published a final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) as part of the HM–251 final rule (*see* Section X, Part G). This EA described the following: (1) The need for the action, (2) the alternatives considered, (3) the environmental impacts of the alternatives and selected action, and (4) the agencies consulted. Given that the revisions adopted in the FAST Act on December 4, 2015 are an expansion of the existing requirements, PHMSA is incorporating that EA by reference consistent with 40 CFR 1502.21, and updating the alternatives and impacts to discuss the FAST Act changes.

1. Need for the Action

As described in detail above, the FAST Act includes the "Hazardous Materials Transportation Safety Improvement Act of 2015" at Sections 7001 through 7311, which instructed the Secretary to make specific regulatory amendments to existing Federal regulations related to tank car design standards and the DOT–111 phase-out schedule codified in the HM–251 final rule. The mandated amendments are non-discretionary, and this action is a response to those mandates.

The need for the requirements in this rulemaking is consistent with that in the HM–251 final rule EA. Specifically, both the HM–251 final rule and this final rule are designed to lessen the consequences of train accidents involving the unintentional release of flammable liquids. The purpose of the regulations for enhanced tank car standards and operational controls is to prevent releases by keeping flammable liquids, including crude oil and ethanol, in rail tank cars and to mitigate the severity of incidents should they occur.

2. Alternatives Considered

As described in section I.A–D above, PHMSA is updating its EA to include discussion of FAST Act mandated changes as described in section I.A through I.D above.

3. Environmental Impacts of Action

As described in the HM–251 final rule EA, the phasing-out of DOT–111 tank cars in flammable liquid service will reduce risk of release because of the improved integrity and safety features of the DOT–117. The changes in the FAST Act will increase the number of tank cars needing to be retrofitted (HHFT vs. flammable liquid tank cars), require thermal protection blanketing on certain tank cars, and require top fittings and pressure release protections. The increased number of tank cars needing to be retrofitted will further reduce risk of release because the improved integrity and safety features of the DOT–117R will be applied to a wider universe.

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[39] Federal preemption also may exist pursuant to § 20106 of the former Federal Railroad Safety Act of 1970, repealed, revised, reenacted, and codified at 49 U.S.C. 20106, which provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the section's "essentially local safety or security hazard."

In determining our cost calculations in the HM–251 RIA, PHMSA assumed that in order to meet the performance standard specified in § 179.18, each tank car built to meet the DOT–117 and each non-jacketed tank car retrofitted to meet the DOT–117R would do so using a thermal protection blanket.[40] Based on this assumption, only the tank cars transporting flammable liquids that were outside the scope of the HHFT definition, which are now subject to the requirements of the FAST Act, will be impacted by this change. Lastly, all new construction and retrofitted tank cars will now benefit from top fittings and pressure relief valve protection. These additional cars will realize the benefits of improved integrity and safety features. With the addition of more tank cars to be retrofitted and with enhanced safety features, this action will further reduce risk of release, and thereby reduce the potential for adverse environmental effects, beyond the HM–251 final rule because of the improved integrity and safety features of the DOT–117.

It should be noted that the FAST Act provisions will result in the manufacturing of some new tank cars to replace retirements. The FAST Act will also increase the number of tank cars subject to this retrofit requirement. Increased manufacture of replacement rail tank cars and the retrofitting of an increased amount of tank cars could nevertheless result in greater short-term release of greenhouse gases and use of resources needed to make the new tank cars or retrofit existing tank cars.[41] PHMSA, however, concluded that the possibility of increased (yet temporary) greenhouse gases and resource use is far outweighed by the benefits of increased safety and integrity of each railcar and each train, as well as the decreased risk of release of crude oil and ethanol to the environment.

PHMSA also recognizes that increased weight of a larger population of affected tank cars due to the requirements in the FAST Act may result in somewhat greater use of fuel and in turn greater release of air pollutants, including carbon dioxide.[42] However, PHMSA notes that the improved integrity of the tank cars being designed to reduce the risk of release of flammable liquids to the environment positively outweighs a relatively small increase in air pollution due to fuel emissions.

4. Agencies Consulted

PHMSA published the HM–251 final rule in consultation with FRA.

5. Conclusion Finding of No Significant Impact

Given that the revisions adopted by the FAST Act on December 4, 2015 are an expansion of the existing requirements, PHMSA specifically focuses on the impacts these changes will have related to the baseline safety level set by the HM–251 final rule. In the HM–251 final rule EA, PHMSA concluded:

> The provisions of this rule build on current regulatory requirements to enhance the transportation safety and security of shipments of hazardous materials transported by rail, thereby reducing the risks of release of crude oil and ethanol and consequent environmental damage. PHMSA has calculated that this rulemaking will decrease current risk of release of crude oil and ethanol to the environment. Therefore, PHMSA finds that there are no significant environmental impacts associated with this final rule.[43]

PHMSA finds that this same conclusion applies to this action and that there are no significant environmental impacts associated with this final rule.

J. Privacy Act

Anyone may search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (“Promoting International Regulatory Cooperation”), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, regulatory approaches developed through international cooperation can provide equivalent protection to standards developed independently while also minimizing unnecessary differences.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public, and we have assessed the effects of the proposed rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended. In addition, the FAST Act revises the U.S. retrofit schedule to further align with tank car requirements that Transport Canada has already implemented. This final rule would amend the HMR to further align with Transport Canada's corresponding Transportation of Dangerous Goods Regulations. (See 49 U.S.C. 5120(b).)

L. Executive Order 13211

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action” [66 FR 28355; May 22, 2001]. Under the Executive Order, a “significant energy action” is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, advance NPRM, and NPRM) that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

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[40] *See* HM–251 Final Rule RIA, p. 172–173.

[41] Greenhouse gas emissions from industry primarily come from burning fossil fuels for energy as well as greenhouse gas emissions from certain chemical reactions necessary to produce goods from raw materials. Thus increased tank car manufacturing and replacement could result in increased greenhouse gases. See *https://www3.epa.gov/climatechange/ghgemissions/sources/industry.html.*

[42] Greenhouse gas emissions from transportation primarily come from burning fossil fuel for our cars, trucks, ships, trains, and planes. See *https://www3.epa.gov/climatechange/ghgemissions/sources/transportation.html.*

[43] *See* HM–251 Final Rule, 80 FR at 26743.

Although this is a significant regulatory action under Executive Order 12866, PHMSA has evaluated this action in accordance with Executive Order 13211 and has determined this action will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, PHMSA has determined this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 179

Hazardous materials transportation, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we amend 49 CFR chapter I as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 1. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 2. In § 173.241, revise paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 173.241 Bulk packagings for certain low hazard liquid and solid materials.

* * * * *

(a) *Rail cars:* Class DOT 103, 104, 105, 109, 111, 112, 114, 115, 117, or 120 tank car tanks; Class 106 or 110 multi-unit tank car tanks; and AAR Class 203W, 206W, and 211W tank car tanks. Additional operational requirements apply to high-hazard flammable trains (*see* § 171.8 of this subchapter) as prescribed in § 174.310 of this subchapter. Except as otherwise provided in this section, DOT Specification 111 tank cars and DOT Specification 111 tank cars built to the CPC–1232 industry standard are no longer authorized to transport Class 3 (flammable) liquids in Packing Group III, unless retrofitted to the DOT Specification 117R retrofit standards or the DOT Specification 117P performance standards provided in part 179, subpart D of this subchapter.

(1) DOT Specification 111 tank cars and DOT Specification 111 tank cars built to the CPC–1232 industry standard are no longer authorized to transport Class 3 (flammable liquids) unless retrofitted prior to the date in the following table:

Material	Jacketed or non-jacketed tank car	DOT–111 not authorized on or after	DOT–111 built to the CPC–1232 not authorized on or after
Class 3, PG III (flammable liquid) material	Non-jacketed	May 1, 2029	May 1, 2029.
	Jacketed	May 1, 2029	May 1, 2029.

Note: For unrefined petroleum products (§ 173.41) and ethanol, *see* §§ 173.242 and 173.243 as appropriate.

* * * * *

■ 3. In § 173.242, revise paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(a) *Rail cars:* Class DOT 103, 104, 105, 109, 111, 112, 114, 115, 117, or 120 tank car tanks; Class 106 or 110 multi-unit tank car tanks and AAR Class 206W tank car tanks. Additional operational requirements apply to high-hazard flammable trains (*see* § 171.8 of this subchapter) as prescribed in § 174.310 of this subchapter. Except as otherwise provided in this section, DOT Specification 111 tank cars and DOT Specification 111 tank cars built to the CPC–1232 industry standard are no longer authorized to transport unrefined petroleum products, ethanol, and other Class 3 (flammable) liquids in Packing Group II or III, unless retrofitted to the DOT Specification 117R retrofit standards, or the DOT Specification 117P performance standards provided in part 179, subpart D of this subchapter.

(1) DOT Specification 111 tank cars and DOT Specification 111 tank cars built to the CPC–1232 industry standard are no longer authorized for transport of Class 3 flammable liquids unless retrofitted prior to the dates corresponding to the specific material in the following table:

Material	Jacketed or non-jacketed tank car	DOT–111 not authorized on or after	DOT–111 built to the CPC–1232 not authorized on or after
Unrefined petroleum product	Non-jacketed	January 1, 2018	April 1, 2020.
	Jacketed	March 1, 2018	May 1, 2025.
Ethanol	Non-jacketed	May 1, 2023	July 1, 2023.
	Jacketed	May 1, 2023	May 1, 2025.
Class 3, PG II or III (flammable liquid) material other than unrefined petroleum products and ethanol.	Non-jacketed	May 1, 2029	May 1, 2029.
	Jacketed	May 1, 2029	May 1, 2029.

* * * * *

■ 4. In § 173.243, revise paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 173.243 Bulk packaging for certain high hazard liquids and dual-hazard materials which pose a moderate hazard.

* * * * *

(a) *Rail cars:* Class DOT 103, 104, 105, 109, 111, 112, 114, 115, 117, or 120 fusion-welded tank car tanks; and Class 106 or 110 multi-unit tank car tanks. Additional operational requirements apply to high-hazard flammable trains (*see* § 171.8 of this subchapter) as prescribed in § 174.310 of this subchapter. Except as otherwise provided in this section, DOT Specification 111 tank cars and DOT Specification 111 tank cars built to the CPC–1232 industry standard are no longer authorized to transport Class 3 (flammable liquids) in Packing Group I, unless retrofitted to the DOT Specification 117R retrofit standards or the DOT Specification 117P performance standards provided in part 179, subpart D of this subchapter.

(1) DOT Specification 111 tank cars and DOT Specification 111 tank cars built to the CPC–1232 industry standard are no longer authorized for transport of Class 3 (flammable liquids) unless retrofitted prior to the dates corresponding to the specific material in the following table:

Material	Jacketed or non-jacketed tank car	DOT–111 not authorized on or after	DOT–111 built to the CPC–1232 not authorized on or after
Unrefined petroleum products	Non-jacketed	January 1, 2018	April 1, 2020.
	Jacketed	March 1, 2018	May 1, 2025.
Class 3, PG I (flammable liquid) other than unrefined petroleum products.	Non-jacketed	May 1, 2025	May 1, 2025.
	Jacketed	May 1, 2025	May 1, 2025.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

■ 5. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 6. Revise § 179.202–6 to read as follows:

§ 179.202–6 Thermal protection system.

The DOT Specification 117 tank car must have a thermal protection system. The thermal protection system must:

(a) Conform to § 179.18 of this part;

(b) Be equipped with a thermal protection blanket with at least ½-inch-thick material that meets § 179.18(c) of this part; and

(c) Include a reclosing pressure relief device in accordance with § 173.31 of this subchapter.

■ 7. In § 179.202–12, revise the section heading to read:

§ 179.202–12 Performance standard requirements (DOT–117P).

* * * * *

■ 8. In § 179.202–13, revise paragraphs (e) and (h) to read as follows:

§ 179.202–13 Retrofit standard requirements (DOT–117R).

* * * * *

(e) *Thermal protection system.* (1) The DOT Specification 117R tank car must have a thermal protection system. The thermal protection system must conform to § 179.18 of this part and include a reclosing pressure relief device in accordance with § 173.31 of this subchapter.

(2) A non-jacketed tank car modified to the DOT Specification 117R must be equipped with a thermal protection blanket with at least ½-inch-thick material that meets § 179.18(c) of this part.

* * * * *

(h) *Top fittings protection*—(1) *Protective housing.* Except as provided in §§ 179.202–13(h)(2) and (3) of this paragraph, top fittings on DOT Specification 117R tank cars must be located inside a protective housing not less than 12-inch in thickness and constructed of a material having a tensile strength not less than 65 kpsi and must conform to all of the following conditions:

(i) The protective housing must have a height exceeding the tallest valve or fitting which requires protection and the height of a valve or fitting within the protective housing must be kept to the minimum size compatible to allow for proper operation.

(ii) The protective housing or cover may not reduce the flow capacity of a pressure relief device below the minimum required.

(iii) The protective housing must provide a means of drainage with a minimum flow area equivalent to six (6) 1-inch diameter weep holes.

(iv) When connected to the nozzle or fitting cover plate, and subject to a horizontal force applied perpendicular to and uniformly over the projected plane of the protective housing, the tensile connection strength of the protective housing must be designed to be—

(A) no greater than 70 percent of the nozzle to tank tensile connection strength;

(B) no greater than 70 percent of the cover plate to nozzle connection strength; and

(C) no less than either 40 percent of the nozzle to tank tensile connection strength or the shear strength of twenty (20) 12-inch bolts.

(2) *Pressure relief devices.* (i) The pressure relief device(s) must be located inside the protective housing, unless space does not allow for placement within a housing. If multiple pressure relief devices are installed, no more than one (1) may be located outside of a protective housing.

(ii) The height of a pressure relief device located outside of a protective housing in accordance with paragraph (h)(2)(i) of this section may not exceed the tank car jacket by more than 12 inches.

(iii) The highest point of a closure of any unused pressure relief device nozzle may not exceed the tank car jacket by more than six (6) inches.

(3) *Alternative.* As an alternative to the protective housing requirements in paragraph (h)(1) of this section, the tank car may be equipped with a system that prevents the release of contents from any top fitting under accident conditions where any top fitting may be sheared off.

Issued in Washington, DC, on August 10, 2016, under authority delegated in 49 CFR part 1.97.

Marie Therese Dominguez,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–19406 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160301165–6692–02]

RIN 0648–BF88

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2016–2018 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements catch limits, commercial quotas, and possession limits for the spiny dogfish fishery for fishing years 2016–2018. This action reduces catch limits for fishing years 2016–2018, but increases the spiny dogfish trip limit. This action is necessary to ensure that overfishing does not occur and is intended to help the spiny dogfish fishery better achieve optimum yield.

DATES: Effective on August 15, 2016.

ADDRESSES: Copies of the specifications, including the Environmental Assessment and Regulatory Impact Review (EA/RIR), and other supporting documents for the action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The framework is also accessible via the Internet at: *http://www.greateratlantic.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, (978) 281–9182.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic spiny dogfish (*Squalus acanthias*) fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils through the Spiny Dogfish Fishery Management Plan (FMP). The Atlantic States Marine Fisheries Commission also manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate plan. Additional information on the FMP is available at *http://www.mafmc.org/fisheries/fmp/dogfish.* Information on the interstate FMP can be reviewed at *http://www.asmfc.org/species/spiny-dogfish.*

On June 22, 2016, we proposed new spiny dogfish specifications (81 FR 40650), which include catch limits, commercial quotas, and possession limits for fishing years 2016–2018. Additional information on how specifications are set can be reviewed through the FMP links provided above or the proposed rule for this action.

Fishing Year 2016–2018 Specifications

We are implementing the acceptable biological catch (ABC) and annual catch limits (ACLs) outlined in our proposed rule (see Table 1 below).

TABLE 1—2016–2018 ACL AND COMMERCIAL QUOTA SPECIFICATIONS FOR THE SPINY DOGFISH FISHERY

Fishing year	ACL (lb)	ACL (mt)	Commercial quota (lb)	Commercial quota (mt)	Change from 2015 (percent)
2016	51,923,272	23,552	40,360,761	18,307	−20
2017	50,662,228	22,980	39,099,717	17,735	−23
2018	49,758,333	22,570	38,195,822	17,325	−25

Although the stock remains healthy and is not overfished or subject to overfishing, the survey index of spawning stock biomass has recently decreased. This decline was not unexpected and is primarily due to (1) high variance in the survey, and (2) poor spiny dogfish pup production (*i.e.,* recruitment to the dogfish stock). These specifications are consistent with the best scientific information available and the Council's and their Scientific and Statistical Committee recommendations. Additional information that explains the status of the spiny dogfish stock and describes the 2016–2018 catch limits is available in the proposed rule and is not repeated here.

Trip Limit Increase

We are approving a trip limit increase from 5,000 lb (2,268 kg) to 6,000 lb (2,722 kg). Because of the proposed harvest reductions (see Table 1), the Councils initially recommended maintaining the current spiny dogfish trip limit of 5,000 lb (2,268 kg). However, after recognizing that the reduced 2016–2018 quotas are still significantly higher than landings in recent years, both Councils and the Commission requested that we increase the trip limit to 6,000 lb (2,722 kg). We specifically solicited public comment on this request in the proposed rule (81 FR 40650; June 22, 2016). We received several comments in support of the trip limit increase. There were two comments opposed to a trip limit increase that provided no specific detail on why the increase would be harmful. Considering this, and understanding that the stock remains healthy, underharvested, and has in place rigid management controls to prevent exceeding the commercial quota, we have elected to increase the trip limit.

Comments and Responses

We received five public comments on the proposed rule during the 15-day comment period.

Comment 1: Two commenters suggested that the trip limit should be reduced to protect the stock and prevent the fishery from becoming overfished.

Response 1: As explained in the proposed rule, the ACLs are being reduced in response to a recent stock assessment update that shows anticipated declines in stock size following a few years of lower pup production. Despite the reduced ACLs, the fishery is not considered overfished or subject to overfishing. The FMP provides authority to close the fishery if the commercial quota will be reached as well as a pound-for-pound overage repayment system should catch in any one year exceed the established quota. Female spawning stock biomass is 6 percent above the target maximum sustainable yield biomass proxy of 351 million lb (159,288 mt). Fishing mortality remains low and the fishery is underutilized—it is not at risk of overfishing or becoming overfished. As a result, it is not necessary to reduce the trip limit to keep the fishery within its catch limits. Should the increased trip limits result in higher harvests than recent years, appropriate management tools are available to prevent overharvesting. In addition, decreasing the trip limit would make it less likely that the fishery could achieve optimum yield.

Comment 2: Both Councils and Massachusetts Division of Marine

Fisheries requested that we increase the spiny dogfish trip limit.

Response 2: We agree. This healthy stock remains greatly underutilized. Increasing the trip limit provides an opportunity for the fishery to better harvest optimum yield and provide increased revenue. For these reasons, in addition to those detailed above, we are increasing the trip limit.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that the 2016–2018 specifications to the FMP are necessary for the conservation and management of the spiny dogfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. Maintaining the 30-day delay in effective date is contrary to the public interest for several reasons. First, increasing the dogfish possession limit from 5,000 lb (2,268 kg) to 6,000 lb (2722 kg) will enhance fishing opportunities and the change is anticipated to increase landings and associated fishing revenue for members of the fishing industry. Therefore, this final rule relieves an economic hardship while allowing the fishery to more effectively achieve optimum yield. Delaying this action for 30 days would result in foregone economic benefits that could not be recovered. Second, the Mid-Atlantic Fishery Management Council did not submit these Specifications and the accompanying environmental assessment until March 11, 2016, making it virtually impossible to solicit public comment through a proposed rule and implement a final rule prior to the start of the fishing year, which began on May 1, 2016. Therefore, this delay has already resulted in missed fishing opportunities and revenue for fishermen and implementation should not be further delayed. Third, keeping an unnecessarily restrictive possession limit would result in fishermen wastefully discarding fish that could have been retained with the higher possession limit approved under this rule. Maintaining the lower catch limit and requiring unnecessary discarding contradicts the best available science and would prevent the fishery from achieving optimum yield. Lastly, because this rule imposes no further restrictions on the fishery that would alter existing fishing practices or require affected entities to acquire additional equipment, there is no need to delay implementation of this action to provide affected entities additional time to prepare for or comply with the implementation of this action. For these reasons, a 30-day delay in effective date is both contrary to the public interest and unnecessary.

This final rule has been determined to be not significant for the purpose of E.O. 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments. A copy of this analysis is available (see **ADDRESSES**).

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

A description of the final rule, why it is being considered, and the legal basis for this rule were contained in the preamble of the proposed rule for this action (81 FR 40650; June 22, 2016) and are not repeated here. The public did not provide any comments on the IRFA; therefore, there are no changes made in this final rule with regards to the economic analyses and impacts.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This final rule would affect fishing vessels, including commercial fishing entities. In 2014, there were 2,473 vessels that held an open access spiny dogfish permit. Cross-referencing those permits with vessel ownership data revealed that 1,830 business entities owned those vessels.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act compliance purposes (80 FR 81194). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) previous standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors, respectively, of the U.S. commercial fishing industry.

An IRFA was developed for this regulatory action prior to July 1, 2016, using SBA's previous size standards. Under the SBA's size standards, 18 of the 1,830 (about 1 percent) spiny dogfish fishing entities were determined to be large. Of the 1,812 entities deemed to be small business entities by the SBA criteria, 570 were finfish, 580 were shellfish, and 244 were for-hire small entities. Further, 418 small entities had no revenue in 2014.

NMFS has qualitatively reviewed the analyses prepared for this final rule using the new size standard. The new standard could result in a few more commercial shellfish businesses being considered small (due to the increase in small business size standards). In addition, the new standard could result in fewer commercial finfish businesses being considered small (due to the decrease in size standards). On average, for small entities, spiny dogfish is responsible for a small fraction of total landings, and active participants derive a small share of gross receipts from the spiny dogfish fishery. As a result, it is unlikely that these size-standard changes would have any impact on the previously conducted analyses.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of This Final Rule

This final rule does not introduce any new reporting, recordkeeping, or other compliance requirements.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

These specifications include management measure alternatives for (1) the spiny dogfish ACLs and associated commercial quotas, and (2) spiny dogfish trip limits.

We do not anticipate any significant economic impacts on small entities to result from this action. While there is an overall reduction in the ACLs, analyses for this action indicate that spiny dogfish landings have been substantially less than the specifications we are approving for fishing years 2016–2018. It is unlikely that potential revenue losses would be directly equal to with the ACL reductions. By contrast, maintaining the status quo ACL is inconsistent with the stated objectives because it does not represent the best available science or the goals and objectives of the FMP.

Regarding spiny dogfish trip limits, this final rule increases trip limits from 5,000 lb (2,268 kg) to 6,000 lb (2,722 kg). In general, higher trip limits could result in greater immediate revenue per trip. There is some risk that increasing trip limits could increase the potential for an abbreviated season if the quota or processing capacity is reached. Also, it is possible that a large trip limit increase could lower ex-vessel prices and/or make prices more unstable. Given the low overall demand for spiny dogfish, trip limits may not have a large effect on overall revenue across the fishery. Therefore, increasing the trip limit may help minimize economic impacts, but only if prices remain relatively stable and demand increases.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (GARFO), and the compliance guide, *i.e.,* permit holder letter, will be sent to all holders of permits for the skate fishery. The guide and this final rule will be posted or publically available on the GARFO Web site (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 9, 2016.

Paul Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.235, revise paragraph (a)(1) to read as follows:

§ 648.235 Spiny dogfish possession and landing restrictions.

(a) * * *

(1) Possess up to 6,000 lb (2,722 kg) of spiny dogfish per trip; and

* * * * *

[FR Doc. 2016–19342 Filed 8–12–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 157
Monday, August 15, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket Number EERE–2013–BT–STD–0033]

RIN 1904–AD02

Energy Conservation Program: Energy Conservation Standards for Portable Air Conditioners

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Reopening of public comment period.

SUMMARY: On June 13, 2016, the U.S. Department of Energy (DOE) published in the **Federal Register** a notice of proposed rulemaking (NOPR) for portable air conditioners. 81 FR 38398. The notice provided opportunity for submitting written comments, data, and information by August 12, 2016. DOE received a request from the Association of Home Appliance Manufacturers (AHAM), dated July 21, 2016, to extend the comment period until December 1, 2016.

DATES: The comment period for the proposed rule published on June 13, 2016 (81 FR 38398), is reopened. DOE will accept comments, data, and information regarding this rulemaking received no later than September 26, 2016.

ADDRESSES: *Instructions:* Any comments submitted must identify the NOPR for Energy Conservation Standards for Portable Air Conditioners, and provide docket number EERE–2013–BT–STD–0033 and/or regulatory information number (RIN) number 1904–AD02. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: PortableAC2013STD0033@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

3. *Postal Mail:* Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* The Appliance and Equipment Standards Program Staff U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., 6th Floor, Washington, DC 20024. Telephone: (202) 586–6636. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *https://www.regulations.gov/docket?D=EERE-2013-BT-STD-0033.* This Web page contains a link to the docket for this document on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *portable_ACs@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–33, 1000 Independence Ave. SW., Washington, DC 20585–0121. Telephone: 202–586–1777; Email: *Sarah.Butler@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On June 13, 2016, DOE published in the **Federal Register** a notice of proposed rulemaking (NOPR) for portable air conditioners. 81 FR 38398. The NOPR provided opportunity for submitting written comments, data, and information by August 12, 2016. DOE received a request from AHAM, dated July 21, 2016, to extend the comment period to December 1, 2016. AHAM and its members stated that they need more time to test a sufficient number of products using the recently published portable AC test procedure in order to provide substantive comments to this rulemaking. A reopening of the comment period would allow additional time that DOE believes is sufficient for AHAM and its members and other interested parties to test existing models to the test procedure, examine the data, information, and analysis presented in the portable air conditioner Technical Support Document, gather any additional data and information to address the proposed standards, and submit comments to DOE.

AHAM's request can be found at: *https://www.regulations.gov/document?D=EERE-2013-BT-STD-0033-0024.* In view of the request DOE has determined that a 45-day extension of the public comment period is appropriate. The comment period is reopened until September 26, 2016. DOE further notes that any submissions of comments or other information submitted between the original comment end date and the reopening of the comment period will be deemed timely filed.

Issued in Washington, DC, on August 8, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–19356 Filed 8–12–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2016–BT–STD–0022]

RIN 1904–AD69

Energy Conservation Program: Energy Conservation Standards for Uninterruptible Power Supplies; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking (NOPR); correction.

SUMMARY: The U.S. Department of Energy (DOE) published a document in the **Federal Register** on August 5, 2016, concerning a notice of proposed rulemaking and announcement of public meeting regarding energy conservation standards for uninterruptible power supplies. 81 FR 52196. The NOPR provided that the public meeting would be held on September 9, 2016. However, due to a scheduling conflict amongst stakeholders, DOE is changing the date of the public meeting to Friday, September 16, 2016, beginning at 9:30 a.m. All other dates, including the date that the comment period closes, remain unchanged.

DATES: This correction is effective August 15, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 586–9870. Email: *battery_chargers_and_external_power_supplies@ee.doe.gov.*

Correction

In the **Federal Register** published on August 5, 2016, (81 FR 52196), in FR Doc. 2016–18446, the following correction should be made:

On page 52196, under the **DATES** section, Meeting, is corrected to read:

Meeting: DOE will hold a public meeting on Friday, September 16, 2016, from 9:30 a.m. to 2:00 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, "Public Participation," for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Issued in Washington, DC, on August 5, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–19102 Filed 8–12–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–3991; Airspace Docket No. 15–ANM–13]

Proposed Amendment of Class D and E Airspace; Eugene, OR, and Corvallis, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace designated as an extension to a Class D or E surface airspace area, and Class E airspace upward from 700 feet above the surface at Mahlon Sweet Field Airport, Eugene, OR, to accommodate airspace redesign. Class E airspace extending upward from 700 feet above the surface at Mahlon Sweet Field Airport also would be amended to remove reference to the Corvallis Municipal Airport by creating a stand-alone airspace designation for Corvallis Municipal Airport. Additionally, this proposal would update the airport reference points for these airports in Class D and E airspace, as well as remove the Notice to Airmen (NOTAM) requirement noted in Class E surface area airspace. Airspace redesign is necessary for the safety and management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before September 29, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2016–3991; Airspace Docket No. 15–ANM–13, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class D and E airspace at Mahlon Sweet Field Airport, Eugene, OR, and Corvallis Municipal Airport, Corvallis, OR.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2015–3991/Airspace Docket No. 15–ANM–13." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace designated as an extension to a Class D or Class E surface area, and Class E airspace extending upward from 700 feet above the surface at Mahlon Sweet Field Airport, Eugene, OR. The Class E surface extension to the north would be slightly modified to contain aircraft using the VOR–A approach, and the extension to the south would be enlarged to contain aircraft using the RNP (RNAV) Z instrument approaches as they descend below 1,000 feet above the surface. Class E airspace extending upward from 700 feet above the surface would be reduced to the northeast and west of the airport, to only that area necessary to contain IFR arrival aircraft, descending below 1,500 feet above the surface, and IFR departure aircraft, until reaching 1,200 feet above the surface, and the Class E airspace extending upward from 1,200 feet above the surface would be revoked, as this airspace area is provided by the Bend, OR Class E En Route airspace area, and duplication is not necessary.

This action also would create stand-alone Class E airspace extending upward from 700 feet above the surface for Corvallis Municipal Airport, Corvallis, OR, thereby removing reference to Corvallis Municipal Airport from the Mahlon Sweet Field Airport airspace designation. The overall Class E airspace area near Corvallis Municipal Airport would remain generally the same, with a slight reduction north, and a slight enlargement west of the airport. The geographic coordinates of these airports would be updated for all Class D and Class E airspace areas.

Class D and E airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM OR D Eugene, OR [Modified]

Mahlon Sweet Field Airport, OR
(Lat. 44°07′29″ N., long. 123°12′43″ W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.6-mile radius of Mahlon Sweet Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM OR E2 Eugene, OR [Modified]

Mahlon Sweet Field Airport, OR
(Lat. 44°07′29″ N., long. 123°12′43″ W.)

That airspace extending upward from the surface within a 4.6-mile radius of Mahlon Sweet Field Airport.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM OR E4 Eugene, OR [Modified]

Mahlon Sweet Field Airport, OR
(Lat. 44°07′29″ N., long. 123°12′43″ W.)

That airspace extending upward from the surface within 3 miles west and 2 miles east of the Mahlon Sweet Field Airport 008° bearing, extending from the 4.6-mile radius of the airport to 6.8 miles north of the airport, and within the area bounded by the airport 142° bearing clockwise to the airport 213° bearing, extending from the 4.6-mile radius to 13.5 miles south of the airport, and within the area bounded by the airport 213° bearing clockwise to the airport 226° bearing, extending from the 4.6-mile radius to 14 miles southwest of the airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM OR E5 Corvallis, OR [New]

Corvallis Municipal Airport, OR
(Lat. 44°29′50″ N., long. 123°17′ 22″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Corvallis Municipal Airport, and 2.4 miles each side of the airport 007° bearing, extending from the 6-mile radius to 12.4 miles north of the airport, and 2.6 miles each side of the airport 104° bearing extending from the 6-mile radius to 7.1 miles east of the airport, and 2 miles each side of the airport 188° bearing extending from the 6-mile radius to 7.1 miles south of the airport.

* * * * *

ANM OR E5 Eugene, OR [Modified]

Mahlon Sweet Field Airport, OR
(Lat. 44°07′29″ N., long. 123°12′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Mahlon Sweet Field Airport, and that airspace within the area bounded by the airport 098° bearing clockwise to the airport 138° bearing, extending from the 6-mile radius to 18.3 miles southeast of the airport, and within the area bounded by the airport 138° bearing clockwise to the 170° bearing, extending from the 6-mile radius to 13.5 miles southeast of the airport, and within the area bounded by the airport 170° bearing clockwise to the 234° bearing, extending from the 6-mile radius to 18.3 miles southwest of the airport, and that airspace within 3.6 miles east and 8.5 miles west of the airport 008° bearing, extending from the 6-mile radius to 16 miles north of the airport.

Issued in Seattle, Washington, on August 4, 2016.

Byron Chew,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–19114 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–3992; Airspace Docket No. 15–ANM–14]

Proposed Amendment of Class E Airspace, Albany, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Albany Municipal Airport, Albany, OR. Advances in Global Positioning System (GPS) mapping accuracy and a reliance on precise geographic coordinates to define airport and airspace reference points have made airspace redesign necessary for the safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before September 29, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2016–3992; Airspace Docket No. 15–ANM–14, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Albany Municipal Airport, Albany, OR.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2015–3992/Airspace Docket No. 15–ANM–14." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E5 airspace extending upward from 700 feet above the surface at Albany Municipal Airport, Albany, OR. Controlled airspace would extend to within a 6.7-mile radius of the airport to accommodate IFR departures up to 1,200 feet above the surface; would include a small extension to the southwest to accommodate IFR arrivals below 1,500 feet above the surface; and a segment east of longitude 123° would be removed, as there are no IFR operations within that area. The FAA found these modifications necessary for the safety and management of IFR operations at the airport, while preserving the navigable airspace for aviation.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

ANM OR E5 Albany, OR [Modified]

Albany Municipal Airport, OR
(Lat. 44°38′16″ N., Long. 123°03′34″ W.)

That airspace extending upward from 700 feet above the surface, within a 6.7-mile radius of Albany Municipal Airport, beginning at the 158° bearing from the airport clockwise to the 022° bearing, thence to the point of beginning, and that airspace 1.4 miles each side of the 230° bearing from the airport extending from the 6.7-mile radius to 8.5 miles southwest of the airport.

Issued in Seattle, Washington, on August 5, 2016.

Sam Shrimpton,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–19116 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Parts 0 and 44

[CRT Docket No. 130; AG Order No. 3726–2016]

RIN 1190–AA71

Standards and Procedures for the Enforcement of the Immigration and Nationality Act

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice (Department) proposes to revise regulations implementing a section of the Immigration and Nationality Act concerning unfair immigration-related employment practices. The proposed revisions are appropriate to conform the regulations to the statutory text as amended, simplify and add definitions of statutory terms, update and clarify the procedures for filing and processing charges of discrimination, ensure effective investigations of unfair immigration-related employment practices, reflect developments in nondiscrimination jurisprudence, reflect changes in existing practices (*e.g.,* electronic filing of charges), reflect the new name of the office within the Department charged with enforcing this statute, and replace outdated references.

DATES: Comments must be submitted on or before September 14, 2016. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until midnight Eastern Time at the end of the day.

ADDRESSES: You may submit written comments, identified by Docket No. CRT 130, by ONE of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: 950 Pennsylvania Avenue NW—NYA, Suite 9000, Washington, DC 20530.

Hand Delivery/Courier: 1425 New York Avenue, Suite 9000, Washington, DC 20005.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. For additional details on submitting comments, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alberto Ruisanchez, Deputy Special Counsel, Office of Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 616–5594 (voice) or (800) 237–2515 (TTY); or Office of Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 353–9338 (voice) or (800) 237–2515 (TTY).

SUPPLEMENTARY INFORMATION:

Executive Summary

The anti-discrimination provision of the Immigration and Nationality Act, section 274B, codified at 8 U.S.C. 1324b, was enacted by Congress as part of the Immigration Reform and Control Act of 1986, Public Law 99–603, to prohibit certain unfair immigration-related employment practices. Congress provided for the appointment of a Special Counsel for Immigration-Related Unfair Employment Practices (Special Counsel) to enforce this provision. Congress has amended 8 U.S.C. 1324b several times. On November 29, 1990, by section 535 of the Immigration Act of 1990, Public Law 101–649, Congress added a new subsection (a)(6) prohibiting certain unfair documentary practices during the employment eligibility verification process. *See* 8 U.S.C. 1324b(a)(6) (1994). On September 30, 1996, by section 421 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, div. C, Congress further amended that provision by providing that unfair documentary practices were unlawful only if done "for the purpose or with the intent of discriminating against an individual in violation of" 8 U.S.C. 1324b(a)(1). *See* 8 U.S.C. 1324b(a)(6) (2000). The set of regulations implementing section 1324b, 28 CFR part 44, has not been updated to reflect the statutory text as amended by IIRIRA. The proposed revisions apply to the Special Counsel's investigations and to cases adjudicated under section 1324b before the Department's Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer (OCAHO).

The proposed revisions to 28 CFR part 44 incorporate the intent requirement contained in the amended statute, and also change the regulatory provisions regarding the Special Counsel's investigation of unfair immigration-related employment practices. Specifically, the proposed revisions update the ways in which charges of discrimination can be filed, clarify the procedures for processing of such charges, and conform the regulations to the statutory text to clarify the timeframes within which the Special Counsel may file a complaint with OCAHO. The proposed revisions also simplify the definitions of certain statutory terms and define additional statutory terms to clarify the full extent of the prohibitions against unfair immigration-related employment practices and to eliminate ambiguities in the regulatory text. Additionally, the proposed revisions codify the Special Counsel's existing authority to seek and ensure the preservation of evidence during investigations of alleged unfair immigration-related employment practices. The proposed revisions also replace references to the former Immigration and Naturalization Service with references to the Department of Homeland Security (DHS), where applicable, in accordance with the Homeland Security Act of 2002, Public Law 107–296 (HSA).

Finally, the proposed revisions reflect the change in name of the office within the Department's Civil Rights Division that enforces the anti-discrimination provision, from the Office of Special Counsel for Immigration-Related Unfair Employment Practices to the Immigrant and Employee Rights Section.

Section-by-Section Summary

28 CFR Part 0

Section 0.53 Immigrant and Employee Rights Section

This proposed rule would amend this section to reflect the new name of the office through which the Special Counsel enforces the anti-discrimination provision. In 1997, the Department of Justice incorporated the Office of Special Counsel for Immigration-Related Unfair Employment Practices into the Civil Rights Division. 62 FR 23657 (May 1, 1997) (codified at 28 CFR 0.53). That office is now called the Immigrant and Employee Rights Section, headed by the Special Counsel, in the Civil Rights Division.

28 CFR Part 44

Subpart A—Purpose and Definitions

Section 44.100 Purpose

The proposed rule would amend this section to reflect the enactment of IIRIRA.

Section 44.101 Definitions of statutory terms and phrases

New paragraph (a) would contain a revised definition of the term "charge." The proposed revisions would simplify this definition by eliminating information related to an alien's immigration status that is not required in determining whether the Special Counsel has jurisdiction to investigate an alleged unfair immigration-related employment practice. The proposed revised definition would ensure that a charge form could be treated as a filed charge even if the form was incomplete, as provided in 28 CFR 44.301, so long as it nonetheless provided sufficient information to determine the agency's jurisdiction. Further, the proposed revisions would codify the longstanding practice of accepting written statements in any language alleging an unfair immigration-related employment practice.

New paragraph (b) would contain a revised definition of the term "charging party." The rule would replace the word "individual" with the term "injured party," which is later defined, in order to simplify the regulatory text. It would also replace the term "private organization" with the term "entity" in order to make clear that the scope of entities that may file a charge on behalf of one or more injured parties is not limited to private organizations. In addition, it would clarify that the DHS may file charges alleging ongoing as well as past acts of unlawful employment discrimination. Finally, it would change the phrase "has been adversely affected" to "is adversely affected" to more closely track the statutory language.

New paragraph (c) would define the term "citizenship status." The proposed revisions add this term to the list of defined statutory terms to codify the definition of this term, consistent with the Special Counsel's longstanding guidance to the public. An individual's citizenship status connotes more than simply whether the individual is or is not a U.S. citizen, and encompasses as well a non-U.S. citizen's immigration status. For example, a refugee denied hire because of his or her refugee status could be a victim of unlawful discrimination. Relevant administrative decisions support the conclusion that an individual's citizenship status includes immigration status. *See, e.g., Kamal-Griffin* v. *Cahill Gordon & Reindel,* 3 OCAHO no. 568, 1641, 1647 (1993) ("Congress intended the term 'citizenship status' to refer both to alienage and to non-citizen status.").

New paragraph (d) would contain a revised definition of "complaint." The proposed revision would clarify that complaints must be filed with OCAHO and allege one or more unfair immigration-related employment practices, and would replace the reference to the former Immigration and Naturalization Service with the DHS, in accordance with the HSA.

New paragraph (e) would define the term "discriminate," as that term is used in 8 U.S.C. 1324b. This proposed definition clarifies that discrimination means the act of intentionally treating an individual differently, regardless of the explanation for the discrimination, and regardless of whether it is because of animus or hostility. *See, e.g., United States* v. *Sw. Marine Corp.,* 3 OCAHO no. 429, 336, 359 (1992). Section 1324b is modeled after Title VII of the Civil Rights Act of 1964, and case law under that provision confirms that intentional discrimination does not require animus or hostility. *See Sodhi* v. *Maricopa Cty. Special Health Care Dist.,* 10 OCAHO no. 1127, 7–8 (2008) ("Because § 1324b was expressly modeled on Title VII of the Civil Rights Act of 1964 as amended . . . case law developed under that statute has long been held to be persuasive in interpreting § 1324b."); *see also Int'l Union* v. *Johnson Controls, Inc.,* 499 U.S. 187, 199 (1991) (stating that, in the context of Title VII, "absence of a malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect. Whether an employment practice involves disparate treatment through explicit facial discrimination does not depend on why the employer discriminates but rather on the explicit terms of the discrimination.").

New paragraph (f) would define the phrase "for purposes of satisfying the requirements of section 1324a(b)." This proposed definition incorporates the well-established construction of this statutory language to include all of an employer's efforts to verify an individual's employment eligibility. Thus, this definition includes not only the process related to completing the DHS Employment Eligibility Verification Form I–9, but also any other employment eligibility verification practices, such as the DHS electronic employment eligibility verification (E-Verify) process. *See, e.g., United States* v. *Mar-Jac Poultry, Inc.,* 10 OCAHO no. 1148, 11 (2012).

New paragraph (g) would define the phrase "for the purpose or with the intent of discriminating against an individual in violation of paragraph (1)," as that phrase is used in 8 U.S.C. 1324b(a)(6). This proposed definition clarifies that the act of intentionally treating an individual differently based on national origin or citizenship status is sufficient to demonstrate discriminatory intent regardless of the explanation for the discrimination, and regardless of whether it is based on animus or hostility. *See United States* v. *Life Generations Healthcare, LLC,* 11 OCAHO no. 1227, 22–23 (2014) (stating that the discriminatory intent inquiry under 8 U.S.C. 1324b(a)(6) involves "ask[ing] the question whether the outcome would have been different if the groups had been reversed"). For instance, an employer's request that an individual present more or different documents than required under 8 U.S.C. 1324a(b) because of the individual's citizenship status or national origin constitutes intentional discrimination, even if the employer thought that requesting such documents would help the individual complete the Form I–9 faster or even if the employer was completely unaware of the prohibition against discrimination in the employment eligibility verification process. *See id.*

New paragraph (h) would define "hiring." This proposed definition is intended to make clear that conduct during the entire hiring process, and not solely the employer's final hiring decision, may constitute an unfair immigration-related employment practice. This definition is consistent with the Special Counsel's longstanding interpretation and is well-established in relevant administrative decisions. *See, e.g., Mar-Jac Poultry, Inc.,* 10 OCAHO no. 1148 at 11; *Mid-Atlantic Reg'l Org. Coal.* v. *Heritage Landscape Servs., LLC,* 10 OCAHO no. 1134, 8 (2010).

New paragraph (i) would contain a revised and simplified definition of "injured party." It would clarify that this term includes any person who claims to be adversely affected by an unfair immigration-related employment practice.

New paragraph (j) would define the statutory phrase "more or different documents than are required under such section." In accordance with both the weight of OCAHO authority and the longstanding interpretation of the Special Counsel, this proposed definition provides that an employer's request that an individual present specific documents from the Form I–9 Lists of Acceptable Documents for employment eligibility verification purposes violates 8 U.S.C. 1324b(a)(6) where that request is made because of the individual's national origin or citizenship status. *See, e.g., United States* v. *Townsend Culinary, Inc.,* 8 OCAHO no. 1032, 454, 507 (1999); *United States* v. *Strano Farms,* 5 OCAHO no. 748, 206, 222–23 (1995); *United States* v. *Beverly Ctr.,* 5 OCAHO no. 762, 347, 351 (1995); *United States* v. *A.J. Bart, Inc.,* 3 OCAHO no. 538, 1374, 1387 (1993); *see also United States* v. *Zabala Vineyards,* 6 OCAHO no. 830, 72, 85–88 (1995) (holding, prior to the enactment of IIRIRA, that 8 U.S.C. 1324b(a)(6) did not prohibit an employer's request for specific documents "in the absence of evidence that . . . aliens but not other new hires were required to rely on and produce specific documents"). To interpret the statute otherwise would allow employers to discriminate against an individual by imposing more restrictions on the documentation that an individual can show to establish identity and employment authorization than 8 U.S.C. 1324a(b) provides.

New paragraph (k) would contain a revised definition of "protected individual." This proposed revision restructures the existing definition for the purpose of clarity, and replaces a reference to the former Immigration and Naturalization Service with the DHS, in accordance with the HSA.

New paragraph (l) would define "recruitment and referral for a fee." This proposed definition is intended to make clear that conduct during the entire process of recruitment or referral for a fee, and not solely the employer's final recruitment or referral decision, may constitute an unfair immigration-related employment practice. This definition is consistent with the Special Counsel's longstanding interpretation and is well-established in relevant administrative decisions. *See, e.g., Mid-Atl. Reg'l Org. Coal.*, 10 OCAHO no. 1134 at 8 (''The governing statute specifically applies to recruitment for employment as well as to hiring, and OCAHO cases have long held that it is the entire selection process, and not just the hiring decision alone, which must be considered in order to ensure that there are no unlawful barriers to opportunities for employment.'').

New paragraph (m) would contain a revised definition of ''respondent.'' This proposed revision is intended to clarify that an entity against whom the Special Counsel opens an investigation is considered a respondent, regardless of whether the investigation was initiated by a charge filed under 8 U.S.C. 1324b(b)(1) or the Special Counsel's independent statutory authority to investigate possible unfair immigration-related employment practices pursuant to 8 U.S.C. 1324b(d)(1).

New paragraph (n) would contain a revised definition of ''Special Counsel.'' This proposed revision makes clear that a duly authorized designee may act as the Special Counsel when the Special Counsel position is vacant.

Section 44.102 Computation of Time

Section 44.102 is added to provide clarification regarding the calculation of time periods specified in part 44.

Section 44.200 Unfair Immigration-Related Employment Practices

Paragraph (a) sets forth the three forms of prohibited unfair immigration-related employment practices: (1) Discrimination with respect to hiring, recruiting or referring for a fee, or discharging an individual; (2) intimidation or retaliation; and (3) unfair documentary practices. The proposed revisions would clarify specific parameters of conduct that constitute unfair documentary practices.

Paragraph (a)(3) sets forth the prohibition against unfair documentary practices. The proposed revisions would replace the term ''documentation abuses'' with ''unfair documentary practices'' to more clearly describe the prohibited conduct. Further, to conform to the statutory text, which was amended by section 421 of IIRIRA, these proposed revisions clarify that a showing of intentional discrimination is required to establish an unfair documentary practice under 8 U.S.C. 1324b(a)(6). Additionally, the proposed revisions would clarify, based on the plain language of the statutory text, that unfair documentary practices do not require a showing that the discriminatory documentary request was made as a condition of employment. Liability for unfair documentary practices should not depend on whether an individual can prove that the documentary request was made as a condition of employment. Furthermore, the statutory text describing unfair documentary practices does not include any language requiring rescission of an employment offer, discharge, or other economic harm to establish liability. *See Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1148 at 11 (''[A]n 'injury' is not necessary to establish liability for document abuse.'' (quoting *United States* v. *Patrol & Guard Enters., Inc.*, 8 OCAHO no. 1040, 603, 625 (2000))); *Townsend Culinary, Inc.*, 8 OCAHO no. 1032, 454, 498–500 (finding pattern or practice of unfair documentary practices and assessing civil penalties for violations without requiring a showing of economic harm); *Robison Fruit Ranch, Inc.* v. *United States*, 147 F.3d 798, 802 (9th Cir. 1998) (request may be an unfair documentary practice even if individual was able to comply with the request). These revisions are consistent with the Special Counsel's longstanding interpretation of the statute.

Paragraph (b) sets forth three circumstances in which paragraph (a)(1) does not apply. The proposed revision would replace the reference to paragraph (a) with a reference to paragraph (a)(1) to conform the exceptions language to the statutory text.

Section 44.202 Counting Employees for Jurisdictional Purposes

This proposed section is newly added and would codify the existing process by which the Special Counsel determines whether the Special Counsel or the Equal Employment Opportunity Commission (EEOC) has jurisdiction over a claim of national origin discrimination under 8 U.S.C. 1324b(a)(1). This section makes clear that the Special Counsel's office will count all full-time and part-time employees employed on the date of the alleged discrimination to determine whether it has jurisdiction over an entity charged with national origin discrimination under 8 U.S.C. 1324b(a)(1). In assessing whether the EEOC might have primary jurisdiction over allegations of national origin discrimination, the Special Counsel will also rely on the method for calculating an entity's number of employees set forth in Title VII of the Civil Rights Act of 1964. *See* 42 U.S.C. 2000e(b). The Special Counsel will refer section 1324b(a)(1) national origin discrimination charges to the EEOC where an employer has 15 or more employees for each working day in each of 20 or more calendar weeks during the current or preceding calendar year. *Id.* If an employer does not meet this threshold, but employed more than three employees on the date of the alleged discrimination, the Special Counsel will investigate the charge.

Section 44.300 Filing a Charge

The proposed revision to paragraph (a) would replace a reference to the former Immigration and Naturalization Service with the DHS, in accordance with the HSA, and simplify the paragraph's structure.

Paragraph (b) would be revised to simplify the existing language and clarify that a charge is deemed to be filed on the date it is transmitted or delivered in instances in which it is filed by a method other than by mail.

Paragraph (c) would be revised to remove specific references to addresses, in order to avoid the need for future technical revisions; to codify the existing practice of accepting charge filings through means other than mail and courier delivery; and to account for new methods of charge filings in the future.

Paragraph (d) would be revised to be consistent with the statutory text. Section 1324b(b)(2) of title 8 of the United States Code prohibits the filing of a charge described in section 1324b(a)(1)(A) with the Special Counsel if a charge with respect to that practice based on the same set of facts has been filed with the EEOC under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. Current paragraph (d) broadens this prohibition to exclude not only duplicative national origin claims under section 1324b(a)(1)(A) but also citizenship status claims under section 1324b(a)(1)(B) that are based on the same set of facts as an EEOC charge. The amendment would make this paragraph consistent with the statute by limiting this prohibition to only national origin charges filed with the Special Counsel under section 1324b(a)(1)(A).

Section 44.301 Receipt of Charge

This section would be substantially reorganized to eliminate ambiguities in the existing regulations regarding the process the Special Counsel follows when a charge is received. Paragraph (a) would be revised to clarify when the obligation is triggered under 8 U.S.C. 1324b(b)(1) to provide notice to the charging party and respondent of the Special Counsel's receipt of a charge.

Paragraph (b) would set forth the contents of the Special Counsel's written notice to the charging party, replace a reference to the former Immigration and Naturalization Service with the DHS, in accordance with the HSA, and conform language regarding the charging party's time frame for filing a complaint to existing statutory text. *See* 8 U.S.C. 1324b(d)(2).

New paragraph (c) would be substantially similar to existing paragraph (e), which sets forth the contents of the Special Counsel's notice to the respondent.

New paragraph (d) would combine existing paragraphs (c)(1) and (d)(2) to more clearly state the process for handling inadequate submissions filed with the Special Counsel. This proposed revision also applies the methodology in revised § 44.300(b) to determine when an inadequate submission later deemed to be a charge is considered filed and when additional information provided pursuant to the Special Counsel's request in response to an inadequate submission is considered timely. While the statute requires that a charge be filed with the Special Counsel within 180 days of the alleged violation, *see* 8 U.S.C. 1324b(d)(3), the statute does not speak to the handling or processing of inadequate submissions. Existing regulations address inadequate submissions as a practical necessity to prevent the Special Counsel's office from investigating claims that clearly fall outside of its jurisdiction, while at the same time ensuring that timely-filed meritorious charges that may be missing some information can still be considered timely. The revisions to the current regulations aim to set forth more clearly and revise the procedures for handling inadequate submissions, including by retaining the 45-day grace period to allow a charging party to provide requested additional information consistent with the Special Counsel's long-standing practice. This grace period is consistent with the remedial purpose of section 1324b. *See United States* v. *Mesa Airlines,* 1 OCAHO no. 74, 461, 513 (1989) (recognizing the "remedial purpose" of section 1324b). That purpose would be frustrated, and meritorious claims would be foreclosed, if the Special Counsel imposed a harsh and rigid rule requiring dismissal of timely-filed charges that may allege a violation of section 1324b, but that do not set forth all the elements necessary to be deemed a complete charge.

New paragraph (e) would be substantially similar to existing paragraph (c)(2), with an additional revision to ensure consistency in the regulations on the determination of the filing date of an inadequate submission.

New paragraph (f) would be added to account for the referral of incomplete or complete charges to the Special Counsel by another government agency.

New paragraph (g) would be substantially similar to existing paragraph (d)(1), with an additional clarification regarding the dismissal of inadequate submissions, and the elimination of the term "with prejudice." These proposed revisions would incorporate the standards set forth in administrative decisions for determining whether an incomplete or complete charge that is filed late should nonetheless be considered timely, including when a dismissed incomplete charge is resubmitted for consideration based on equitable reasons. It is well-established in relevant administrative decisions that the 180-day charge filing period is not a jurisdictional prerequisite, but is subject to waiver, estoppel, and equitable tolling. *See, e.g., Lardy* v. *United Airlines, Inc.,* 4 OCAHO no. 595, 31, 73 (1994); *Halim* v. *Accu-Labs Research, Inc.,* 3 OCAHO no. 474, 765, 779 (1992). While those equitable modifications of filing deadlines are sparingly applied, they may be available particularly where the failure to meet a deadline arose from circumstances beyond the charging party's control. *See, e.g., Sabol* v. *N. Mich. Univ.,* 9 OCAHO no. 1107, 4–5 (2004).

Section 44.302 Investigation

Paragraph (a) would be revised to describe more broadly the means by which the Special Counsel may undertake an investigation of possible unfair immigration-related employment practices, including the authority to solicit testimony as necessary.

New paragraph (b) would authorize the Special Counsel to require any person or other entity to present Forms I–9 for inspection. The Immigration and Nationality Act expressly provides the Special Counsel with authority to inspect Forms I–9. *See* 8 U.S.C. 1324a(b)(3).

New paragraph (c) would be substantially similar to existing paragraph (b), but would broaden the list of items that an entity or person must permit the Special Counsel to access.

New paragraph (d) would codify the preservation obligations of a respondent that is the subject of an investigation by the Special Counsel. Such obligations are necessary to ensure that the Special Counsel's right to access and examine evidence is preserved. *See id.* 1324b(f)(2). In addition, these obligations are reasonable and appropriate in light of the Special Counsel's authority to seek a subpoena requiring the production of relevant evidence. *Id.* Finally, since at least 2006, all entities subject to an investigation by the Special Counsel have been instructed in writing, at the outset of the investigation, to preserve relevant documents. These obligations are also consistent with "litigation hold" requirements under the Federal Rules of Civil Procedure. *See, e.g.,* Fed. R. Civ. P. 16(b)(3)(B)(iii), 26(b)(5)(B), 45(e)(2)(B).

Section 44.303 Determination

Paragraph (a) would be revised and simplified.

Paragraph (b) would be revised to more clearly set forth the time frame for the Special Counsel to issue letters of determination.

Paragraph (c) would be revised to replace a reference to the former Immigration and Naturalization Service with the DHS, in accordance with the HSA.

Paragraph (d) would be revised to clarify that the Special Counsel is not bound by the 90-day statutory time limit on filing a complaint that is applicable to individuals filing private actions. The only statutory time limit on the Special Counsel's authority to file a complaint based on a charge is contained in 8 U.S.C. 1324b(d)(3), entitled "Time limitations on complaints," and states that "[n]o complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel." The 90-day statutory time limit, in contrast, is contained in 8 U.S.C. 1324b(d)(2), entitled "Private actions," and states that "the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge within 90 days after the date of receipt of the notice." The "Private actions" provision makes clear that the Special Counsel has a right to "investigate the charge or to bring a complaint . . . during such 90-day period." *Id.* Nothing in the statute explicitly states that the Special Counsel is subject to that 90-day limit, however, or prohibits the Special Counsel's office from continuing to investigate a charge or from filing its own complaint based on a charge even after the 90-day period for a charging party to file a private complaint has run.

Relevant administrative decisions interpreting section 1324b support the conclusion that the Special Counsel is not bound by the statutory time limits that are applicable to individuals filing private actions. *See, e.g., United States* v. *Agripac, Inc.,* 8 OCAHO no. 1028, 399, 404 (1999) (stating that section 1324b "does not set out in terms any particular time within which the Special Counsel must file a complaint before an administrative law judge"); *United States* v. *Gen. Dynamics Corp.*, 3 OCAHO no. 517, 1121, 1156 (1993) ("The statute contains no time limitations on the Special Counsel's authority to conduct independent investigations or to subsequently file complaints based on such investigations."). The Special Counsel's position is also consistent with the Supreme Court's interpretation of a similar provision in Title VII of the 1964 Civil Rights Act. *See Occidental Life Ins. Co. of Calif.* v. *EEOC*, 432 U.S. 355, 361 (1977) (holding that the EEOC is not subject to a complaint-filing deadline where the statutory language does not explicitly contain such a deadline and the legislative history does not support it). Given that section 1324b is modeled after Title VII—with similar charge-filing procedures and virtually identical timetables—the Supreme Court's ruling on this issue is highly instructive. *See Sodhi*, 10 OCAHO no. 1127 at 7–8.

The Special Counsel's authority to file a complaint based on a charge is, however, subject to some time limits. Similar to the EEOC, the Special Counsel is bound by equitable limits on the filing of a complaint. *See EEOC* v. *Propak Logistics, Inc.*, 746 F.3d 145 (4th Cir. 2014). In addition, the Special Counsel must comply with the five-year statutory time limit in 28 U.S.C. 2462 for bringing actions to impose civil penalties.

Section 44.304 Special Counsel Acting on Own Initiative

Paragraph (a) sets forth the process for the Special Counsel to conduct an investigation on his or her own initiative. This paragraph would be revised to conform with the Special Counsel's existing practice of notifying a respondent by certified mail of an investigation opened under this paragraph. Comments addressing whether the use of certified mail is effective are encouraged. For commenters who believe another method is preferable (such as regular mail or regular mail with delivery tracking), comments explaining why another method is preferable are also encouraged.

Paragraph (b) would be revised to make the time frame for the Special Counsel to bring a complaint based on an investigation opened on the Special Counsel's own initiative pursuant to 8 U.S.C. 1324b(d)(1) and 28 CFR 44.304(a) consistent with the statutory text. The statutory text can be reasonably read to provide no time limit for the Special Counsel to file a complaint. *United States* v. *Fairfield Jersey, Inc.*, 9 OCAHO no. 1069, 5 (2001) (acknowledging the absence of a statutory time limitation for the filing of a complaint arising out of an independent investigation). The statute provides only that the Special Counsel's authority to file a complaint based on such investigations be "subject to" 8 U.S.C. 1324b(d)(3), which in turn specifies that "[n]o complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the *filing of the charge* with the Special Counsel." 8 U.S.C. 1324b(d)(1), (3) (emphasis added). Where the Special Counsel is conducting an investigation on his or her own initiative, no "charge" has been filed. The most reasonable application of 8 U.S.C. 1324b(d)(3) in that circumstance, therefore, is that the Special Counsel may not file a complaint unless an investigation on the Special Counsel's own initiative pursuant to 8 U.S.C. 1324b(d)(1) was opened within 180 days of the last known act of discrimination, as the opening of the Special Counsel's investigation is the nearest equivalent to the filing of a charge. The current regulations require the Special Counsel to file a complaint "where there is reasonable cause to believe that an unfair immigration-related employment practice has occurred within 180 days from the date of the *filing of the complaint.*" 28 CFR 44.304(a) (emphasis added). That requirement unnecessarily restricts the Special Counsel's enforcement authority and is not required by the language of the statute. While the Special Counsel and respondents have entered into stipulations to extend the complaint-filing date in circumstances when the Special Counsel requires more time to conduct an investigation under 8 U.S.C. 1324b(d)(1) or to facilitate settlement discussions, it is appropriate to revise the regulations to better accord with the statutory language. Similar to the EEOC, the Special Counsel is bound by equitable limits on the filing of a complaint. *Propak Logistics*, 746 F.3d 145. In addition, the Special Counsel must comply with the five-year statutory time limit for bringing actions to impose civil penalties. 28 U.S.C. 2462.

Section 44.305 Regional Offices

The proposed rule would amend this section to conform its language to 8 U.S.C. 1324b(c)(4).

Public Participation

Please note that all comments received are considered part of the public record and are made available for public inspection online at *http://www.regulations.gov*. The information made available includes personal identifying information (such as name and address) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov*.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. The docket file will be available for public inspection during normal business hours at 1425 New York Avenue, Suite 9000, Washington, DC 20005. Upon request, individuals who require assistance to review comments will be provided with appropriate aids such as readers or print magnifiers. If you wish to inspect the agency's public docket file in person, please see the **FOR FURTHER INFORMATION CONTACT** paragraph above to schedule an appointment.

Copies of this rule may be obtained in alternative formats (large print, Braille, audio tape, or disc), upon request, by calling DeJuana Grant at (202) 616–5594. TTY/TDD callers may dial toll-free (800) 237–2515 to obtain information or request materials in alternative formats.

Regulatory Procedures

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

The rule has been drafted and reviewed in accordance with Executive

Order 12866 (Sept. 30, 1993), and Executive Order 13563 (Jan. 18, 2011). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits (while recognizing that some benefits and costs are difficult to quantify), reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and Office of Management and Budget (OMB) review. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as any regulatory action that is likely to result in a rule "that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The Department has determined that the proposed rule is not an economically significant regulatory action under section 3(f)(1) of Executive Order 12866 because the Department estimates that its annual economic impact will be a one-time, first-year-only cost of $12.3 million—far less than $100 million. The Department has quantified and monetized the costs of the proposed rule over a period of 10 years (2016 to 2025) to ensure that its estimate captures all major benefits and costs, but has determined that all quantifiable costs will only be incurred during the first year after the regulations are implemented. Because the Department was unable to quantify the benefits of the proposed rule due to data limitations, the benefits are described qualitatively. When summarizing the costs of specific provisions of the proposed rule, the Department presents the 10-year present value of the proposed rule requirements.

The Department considered the following factors when measuring the proposed rule's impact: (a) Employers familiarizing themselves with the rule, (b) employers reviewing and revising their employment eligibility verification policy, and (c) employers and employees viewing training webinars. The largest first-year cost is the cost employers would incur to review and revise their employment eligibility verification policies, which is $7,840,566. The next largest cost is the cost employers would incur to familiarize themselves with the rule, which is $4,448,548.

The economic analysis presented below covers all employers with four or more employees, consistent with the statute's requirement that a "person or entity" have more than three employees to fall within OSC's jurisdiction for citizenship status and national origin discrimination in hiring, firing, and recruitment or referral for a fee. 8 U.S.C. 1324(a)(2).

In the following sections, the Department first presents a subject-by-subject analysis of the costs of the proposed rule. The Department then presents the undiscounted 10-year total cost ($12.3 million) and a discussion of the expected benefits of the proposed rule. The costs are incurred entirely in the first year; thus, they are not discounted.

The Department did not identify any transfer payments associated with the provisions of the rule. Transfer payments, as defined by OMB Circular A–4, are "monetary payments from one group to another that do not affect total resources available to society." OMB Circular A–4 at 38 (Sept. 17, 2003). Transfer payments are associated with a distributional effect but do not result in additional costs or benefits to society.

In the subject-by-subject analysis, the Department presents the labor and other costs for each provision of the proposed rule. Exhibit 1 displays the labor categories that are expected to experience an increase in level of effort (workload) due to the proposed rule. To estimate the cost, the Department multiplied each labor category's hourly compensation rate by the level of effort. The Department used wage rates from the Mean Hourly Wage Rate calculated by the Bureau of Labor Statistics.[1] Wage rates are adjusted using a loaded wage factor to reflect total compensation, which includes health and retirement benefits. The loaded wage factor was calculated as the ratio of average total compensation to average wages in 2014, which resulted in 1.43 for the private sector.[2] The Department then multiplied the loaded wage factor by each labor category's wage rate to calculate an hourly compensation rate.

EXHIBIT 1—CALCULATION OF HOURLY COMPENSATION RATES

Position	Average hourly wage [a]	Loaded wage factor [b]	Hourly compensation rate c = a × b
Human Resources Manager	$54.88	1.43	$78.4784
Attorney	64.17		91.7631

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[1] Bureau of Labor Statistics, May 2014 National Occupational Employment and Wage Estimates: United States (Mar. 25, 2015), *http://www.bls.gov/oes/current/oes_nat.htm.*

[2] The Department calculated average total compensation by taking the average of the cost of total compensation for all workers in December, September, June, and March of 2014 ((31.32 + 30.32 + 30.11 + 29.99)/4 = 30.44), and calculated average wages by taking the average of the cost of wages and salaries for those employees in each of those four months ((21.72 + 21.18 + 21.02 + 20.96)/4 = 21.22). *See* BLS, News Release, Employer Costs for Employee Compensation—December 2014, Table 5 (Mar. 11, 2015); BLS, News Release, Employer Costs for Employee Compensation—September 2014, Table 5 (Dec. 10, 2014); BLS, News Release, Employer Costs for Employee Compensation—June 2014, Table 5 (Sept. 10, 2014); BLS, News Release, Employer Costs for Employee Compensation—March 2014, Table 5 (June 11, 2014). (Each of these news releases is available at *http://www.bls.gov/schedule/archives/ecec_nr.htm.*) The Department then calculated the loaded wage factor by taking the ratio of average total compensation to average total wages (30.44/21.22 = 1.43).

1. Subject-by-Subject Analysis

a. Employers Familiarize Themselves With the Rule

During the first year of the rule, employers with a developed human resources practice would need to read and review the rule to learn about the new requirements. The Department determined that no costs would be incurred by employers to familiarize themselves with the rule in years two through ten because (1) the cost for an existing employer to familiarize itself with the rule if it delays doing so until a subsequent year is already incorporated into the first-year cost calculations; and (2) for employers that are newly created in years two through ten, the cost of familiarization is the same as exists under the current regulations and, therefore, there is no incremental cost.

Employers would incur labor cost to familiarize themselves with the new rule. To estimate the labor cost for this provision, the Department first estimated the number of employers that would need to familiarize themselves with the proposed rule by relying on the number of organizational members in the Council for Global Immigration (CGI) and the Society for Human Resource Management (SHRM).[3] The Department used the number of organizational members in these two organizations as a proxy for the number of employers with a developed human resources practice that can be expected to institutionalize the regulatory changes. The Department acknowledges the possible overlap between SHRM and CGI members. The Department's analysis model therefore likely overestimates, to some extent, the number of entities (and thus, the costs) by assuming that an entity is a member of either SHRM or CGI, but not both.

The Department then multiplied the estimated number of employers by the assumed number of human resources (HR) managers per employer, the time required to read and review the new rule, and the hourly compensation rate. The Department estimated this one-time cost to be $4,448,548.[4]

b. Employers Review and Revise Employment Eligibility Verification Policies

The proposed rule would require some employers to revise their employment eligibility verification policies. Although all U.S. employers must ensure that a Form I–9 is properly completed for each individual they hire for employment in the United States to verify the individual's identity and employment authorization in accordance with their obligations under 8 U.S.C. 1324a, only a subset of employers has detailed written policies addressing compliance with section 1324b. The Department assumed that these employers save their policies in an electronic format that can be readily modified. For the policy revisions, employers would complete a simple "search-and-replace" to update the agency's name and possibly replace the term "documentation abuse(s)" with "unfair documentary practice(s)."

Only the very limited number of those employers that have detailed written employment eligibility policies would need to make additional modifications to their policies. The Department estimated costs only for those employers that have written employment eligibility verification policies and that would be expected to review their policies and make changes as needed. The time involved would depend on the changes employers need to make and how many sections of the policy would need to be modified.

Employers with policies for verifying employment eligibility (and possibly employers with hiring or termination policies, even if they lack policies for verifying employment eligibility) might conduct a front-to-back review of their policies to determine whether any additional changes are needed.

These changes and reviews would represent an upfront, one-time cost to employers. The Department estimates this cost as the sum of the cost of revising the policies by making word replacements; the cost, for some employers, of making additional changes beyond word replacements; and the cost of conducting a front-to-back review of the employment eligibility verification policies.

To estimate the labor cost for making word replacements to the employment verification policies, the Department first estimated the number of employers that would make these revisions because of the proposed rule by relying on the number of organizational members in the SHRM and CGI. The Department then multiplied the estimated number of employers by the assumed number of HR managers per employer, the time required to make the revisions, and the hourly compensation rate.[5] This calculation yields $1,112,137 in labor costs related to revising employment eligibility verification policies in the first year of the rule.

To estimate the additional cost to those employers making changes beyond word replacements in the first year of the proposed rule, the Department assumed that 5 percent of employers (*i.e.,* the number of organizational members in CGI and SHRM) would make these changes. The Department then multiplied the number of employers that would make these additional changes by the assumed number of HR managers per employer, the time required to make the changes, and the hourly compensation rate. This calculation yields $55,607 in labor costs in the first year of the rule.[6]

To estimate the cost of conducting a front-to-back review of the policies for verifying employment eligibility (or hiring and termination policies), the Department multiplied the number of employers (*i.e.,* the number of organizational members in CGI and SHRM) by the number of HR managers per employer, the time required for a review, and the hourly compensation rate. This calculation yields $6,672,822 in labor costs in the first year of the rule.[7]

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[3] The Department obtained the number of individual and organizational members in CGI and the number of individual members of SHRM directly from these two organizations. Data on the number of organizational members of SHRM was not available. To estimate the number of organizational members in SHRM, the Department applied the same ratio of organizational members (230) to individual members (1,100) in CGI to the number of individual members in SHRM (270,000), which results in 56,455 organizational members (270,000 × 230/1,100). The Department added the number of organizational members in CGI (230) and SHRM (56,455) to estimate the number of organizational members in the analysis (56,685), which serves as a proxy for the number of employers that would need to take action because of the proposed rule.

[4] The Department estimated the cost of this review by multiplying the estimated number of employers (56,685) by the number of HR managers per employer (1), the time needed to read and review the rule (1 hour), and the hourly compensation rate ($78.4784). This calculation yields a labor cost of $4,448,548.

[5] To estimate the cost of making revisions, the Department multiplied the estimated number of employers (56,685) by the assumed number of HR managers per employer (1), the hourly compensation rate ($78.4784), and the time required to make the revisions (0.25 hours). This calculation results in a cost of $1,112,137.

[6] To estimate the cost of making changes beyond word replacements, the Department first calculated the number of employers that would make these changes. The Department obtained the number of employers that would make these additional changes by multiplying the number of employers (56,685) by the assumed percentage of employers that would make these additional changes (5%). This calculation yields the number 2,834.25. The Department then multiplied that number of employers (2,834.25) by the number of HR managers per employer (1), the hourly compensation rate ($78.4784), and the time required to make the changes (0.25 hours). This calculation results in a cost of $55,607.

[7] To estimate the cost of reviewing the policies, the Department assumed, out of an abundance of caution, that all of the employers affiliated with CGI or SHRM would dedicate one HR manager to conduct a front-to-back review of their policies.

In total, the one-time costs to employers to revise the policies for verifying employment eligibility by making word replacements, to make additional changes beyond word replacements in the case of some employers, and to conduct a front-to-back review of those policies, are estimated to be $7,840,566 during the first year of rule implementation.

c. Employers and Employees View Training Webinars

During the first year of implementation, as a part of the Department's ongoing educational webinar series, the Department expects to schedule three live, optional employer training webinars per month and one live, optional advocate/employee training webinar per month to assist employers, employees, attorneys, and advocates in understanding the changes resulting from the rule. These live one-hour training webinars would cover the full spectrum of employer obligations and employee rights under the statute. The Department also expects to create three one-hour recorded webinars: One for employers and their representatives and two for employees and their representatives (one in English and one in Spanish). The Department anticipates that participation will occur mostly through viewings of the one-hour recorded webinars. The recorded training webinars developed to explain the post-rule regulatory and statutory obligations and rights would eventually replace the Department's existing live webinars. Therefore, the Department has calculated these costs for employers, employees, and their representatives to be incurred in the first year when learning about the changes, whether through a live or recorded training webinar. Thereafter, newly-created employers would be viewing training webinars instead of (not in addition to) viewing current webinars, with no incremental costs incurred.

To estimate the cost to employers of viewing training webinars, the Department summed the labor costs for those viewing live webinars and the labor costs for those viewing recorded webinars. To estimate the number of employers viewing the live webinars, the Department used statistics on the average number of employer participants in live webinars. To estimate the number of employers viewing a recorded webinar, the Department used data on the number of viewings of the Department's educational videos pertaining to employer obligations under 8 U.S.C. 1324b that are posted on YouTube. Both estimates assume a 15-percent increase in participation following the implementation of the proposed rule.[8] The Department multiplied the number of employers expected to view a webinar (represented by their HR managers) by the hourly compensation rate, the time required to view a webinar, and the number of training webinars in the first year for both live and recorded webinars. The total one-time cost to employers for viewing live and recorded webinars is estimated to be $26,447.[9]

To estimate the cost to employees of viewing live training webinars, the Department used existing statistics on the average participation of employees. To estimate the cost to employees of viewing recorded webinars, the Department used the employer-to-employee ratio of participation for the live webinars and applied it to the number of views of the Department's educational videos on YouTube. Both estimates assume a 5-percent increase in participation following the implementation of the proposed rule.[10] These estimates are only related to the webinars recorded in English, since the Department does not expect an increase in the number of views of the Spanish webinars following the implementation of the rule. In the Department's experience, in many cases the live Spanish webinars that have been offered have been canceled due to low turnout. In other cases, the Spanish webinars proceeded but with a turnout of fewer than ten participants, who are typically employees. The Department multiplied the number of employees expected to view webinars (represented by their attorneys) by the hourly compensation rate, the time required to view a webinar, and the number of training webinars in the first year for both live and recorded webinars. The Department estimates a total and aggregate one-time cost of $1,835 for viewing live and recorded advocate/employee webinars.[11]

Accordingly, the total one-time cost to employers and employees of viewing live and recorded webinars would be $28,282.

d. Benefits of the Proposed Rule

The Department was not able to quantify the benefits of the proposed rule due to data limitations, such as an inability to calculate the amount of time employers would save from the proposed rule. Several benefits to society would result, however, from the proposed rule, including the following:

Helping employers understand the law more efficiently. The proposed regulatory changes would reduce the time and effort necessary for employers to understand their statutory obligations by incorporating well-established administrative decisions, the Department's long-standing positions, and statutory amendments into the regulations.

Accordingly, the Department multiplied the number of employers (56,685) by the assumed number of HR managers per employer (1), the hourly compensation rate ($78.4784), and the time required to review the policies (1.5 hours). This calculation results in a cost of $6,672,822.

[8] On average, 44.7 individuals participate in live webinars for employers. The Department assumed that there would be a 15-percent increase in the number of participants following the implementation of the proposed rule. Thus, the Department estimated costs for seven employers (*i.e.*, 15 percent of the 44.7 individuals) related to viewing the live webinar. On average, 567 individuals have viewed each of the educational YouTube videos. Thus, the Department estimated costs for 85 employers (*i.e.*, 15 percent of the 567 individuals) related to viewing the recorded webinar.

[9] The Department estimated the cost of viewing the live webinars by taking the product of the number of employer representatives (HR managers) viewing the live webinar (7), the hourly compensation rate ($78.4784), the number of webinars per year (36), and the time required to view the webinar (1 hour). This yielded a cost of $19,777. The Department then estimated the cost of viewing the recorded webinars by taking the product of the number of employer representatives (HR managers) viewing the recorded webinars (85), the hourly compensation rate ($78.4784), the number of webinars (1), and the time required to view the webinar (1 hour). This yielded a cost of $6,671. The total cost of viewing webinars was estimated by taking the sum of the cost of viewing live webinars and the cost of viewing recorded webinars, to obtain a total cost of $26,447.

[10] On average, 12 individuals participate in live webinars for employees. The Department assumed that there would be a 5-percent increase in individuals following the implementation of the proposed rule. Thus, the Department estimated costs for one employee (*i.e.*, 5 percent of the 12 individuals) related to viewing the live webinars. On average, 567 individuals viewed the educational YouTube videos. The Department assumed the same proportion of employees-to-employers viewing the live webinars (0.268 = 12/44.7) would view the recorded webinars. This number would translate to 152 employees or employee advocates viewing the educational YouTube videos. Thus, the Department estimated costs for 8 employees (*i.e.*, 5 percent of the 152 individuals) related to viewing the recorded webinar.

[11] The Department estimated the cost of viewing live webinars by taking the product of the number of employee representatives (captured by the attorney occupational category) viewing the live webinar (1), the hourly compensation rate ($91.7631), the number of webinars (12), and the time required to view the webinar (1 hour). This resulted in a cost of $1,101. The Department then estimated the cost of viewing recorded webinars by taking the product of the number of employee representatives, assumed to be an attorney, viewing the recorded webinar (8), the hourly compensation rate ($91.7631), the number of webinars (1), and the time required to view the webinar (1 hour). This resulted in a cost of $734. The total cost of viewing webinars was estimated by taking the sum of the cost of viewing live webinars and the cost of viewing recorded webinars, to obtain a total cost of $1,835.

Increasing public access to government services. The proposed regulatory changes would streamline the charge-filing process for individuals alleging discrimination.

Eliminating public confusion regarding two offices in the Federal Government with the same name. The proposed regulatory changes would reflect the change in the name of the office charged with enforcing 8 U.S.C. 1324b from the Office of Special Counsel for Immigration-Related Unfair Employment Practices to the Immigrant and Employee Rights Section, thereby eliminating delays in processing submissions that currently occur due to confusion associated with having two Offices of Special Counsel in the Federal Government.[12]

Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, and Executive Order 13272 (Aug. 13, 2002), require agencies to prepare a regulatory flexibility analysis of the anticipated impact of a regulation on small entities. The RFA provides that the agency is not required to prepare such an analysis if an agency head certifies, along with a statement providing the factual basis for such certification, that the regulation is not expected to have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). Based on the following analysis, the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The Department's analysis focused on small businesses or nonprofits with 20 to 499 employees. The Department assumed that small businesses or nonprofits with fewer than 20 employees will not have a detailed written policy addressing compliance with 8 U.S.C. 1324b.

The Department assumed that, in total, 56,685 entities will be affected by the proposed rule. Of those 56,685 affected entities, the Department estimated that 28,343 entities would be small employers.[13] Dividing the affected population (28,343) by the total number of small businesses and non-profits (664,094), the Department estimates that 4.3 percent of small entities would be impacted by the proposed rule.[14]

The Department estimated the costs of (a) familiarizing staff with the new requirements in the rule, (b) reviewing and revising their employment eligibility verification policy, and (c) viewing a training webinar. The analysis focused on the first year of rule implementation, when all costs of the proposed rule are incurred. The Department estimates that the total one-year cost per small employer is $314.[15] The Department has determined that the yearly cost of $314 will not be a significant economic impact on any of the affected small entities. Therefore, the Department has certified that the proposed rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations contain no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 8 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this proposed rule does not include any Federal mandate that may result in excess of $100 million in expenditures by State, local, and tribal governments in the aggregate or by the private sector.

Executive Order 13132 (Federalism)

The agency has reviewed this proposed rule in accordance with Executive Order 13132 (Aug. 4, 1999), and has determined that it does not have "federalism implications." This proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have tribal implications under Executive Order 13175 (Nov. 6, 2000) that would require a tribal summary impact statement. The proposed rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

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[12] In addition to the Official of Special Counsel for Immigration Related Unfair Employment Practices established by 28 CFR 0.53, Congress has established an Office of Special Counsel charged with protecting employees, former employees, and applicants for employment from prohibited personnel practices, among other functions. *See* 5 U.S.C. 1211–1212.

[13] According to the SHRM Web site, approximately 50 percent of the organization's members work in organizations with fewer than 500 employees. *See* SHRM, About the Society for Human Resource Management, *http://www.shrm.org/about/pages/default.aspx*. Taking 50 percent of the total estimated number of members in SHRM and CGI (56,685) results in 28,343 small entities.

[14] The Department assumed that the total number of small businesses and non-profits is equal to the number of firms with 20 to 499 employees. Because the U.S. Census Bureau did not identify the number of firms with 20 to 499 employees in 2013, the most recent year for which data is available, the Department calculated the estimated number of firms with 20 to 499 employees in that year by calculating the number of establishments with 20 to 499 employees in 2013 and dividing it by the ratio of small establishments to small firms in 2012. To perform that calculation, the Department first determined the estimated number of firms with 20 to 99 employees in 2013 by (1) adding the number of establishments with 20 to 49 employees in 2013 and the number of establishments with 50 to 99 employees in 2013 (652,075 + 221,192 = 873,267); (2) dividing the number of establishments with 20 to 99 employees in 2012 by the number of firms with 20 to 99 employees in 2012 (687,272/494,170 = 1.39076); and (3) dividing the first number by the second (873,267/1.39076 = 627,906). The Department then determined the estimated number of firms with 100 to 499 employees in 2013 by (1) adding the number of establishments with 100 to 249 employees in 2013 and the number of establishments with 250 to 499 employees in 2013 (124,411 + 31,843 = 156,254); (2) dividing the number of establishments with 100 to 499 employees in 2012 by the number of firms with 100 to 499 employees in 2012 (360,207/83,423 = 4.3178); and (3) dividing the first number by the second (156,254/4.3178 = 36,188). Last, to determine the estimated number of firms with 20 to 499 employees in 2013, the Department added the estimated number of firms with 20 to 99 employees in 2013 and the estimated number of firms with 100 to 499 employees in 2013 (627,906 + 36,188 = 664,094). *See* U.S. Census Bureau, 2013 County Business Patterns (NAICS), *http://censtats.census.gov;* U.S. Census Bureau, 2012 Statistics of U.S. Businesses, Number of Firms, Number of Establishments, Employment, Annual Payroll, and Estimated Receipts by Enterprise Employment Size for the United States and States, Totals: 2012; *http://www.census.gov/econ/susb/historical_data.html.*

[15] The Department estimated a cost of $314 per small entity by taking the sum of the cost per small entity of each of the proposed changes to the rule. This includes the following costs: Familiarization with the rule ($78), revising employment eligibility verification policies by making word replacements ($20), making additional changes beyond word replacements ($20), conducting a front-to-back review of the employment eligibility verification policies ($118), and viewing the training webinar ($78).

Executive Order 13045 (Protection of Children)

This proposed rule is not a covered regulatory action under Executive Order 13045 (Apr. 21, 1997). The proposed rule would have no environmental health risk or safety risk that may disproportionately affect children.

Executive Order 12630 (Constitutionally Protected Property Rights)

This proposed rule does not have takings implications under Executive Order 12630 (Mar. 15, 1988). The proposed rule would not effect a taking or require dedications or exactions from owners of private property.

Executive Order 12988 (Civil Justice Reform Analysis)

This proposed rule was drafted and reviewed in accordance with Executive Order 12988 (Feb. 5, 1996), and will not unduly burden the Federal court system. Complaints respecting unfair immigration-related employment practices are heard in the first instance by the Department of Justice, Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer.

List of Subjects

28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

28 CFR Part 44

Administrative practice and procedure, Equal employment opportunity, Immigration.

For the reasons stated in the preamble, the Attorney General proposes to revise 28 CFR parts 0 and 44 as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. Section 0.53 is revised to read as follows:

§ 0.53 Immigrant and Employee Rights Section.

(a) The Immigrant and Employee Rights Section shall be headed by a Special Counsel for Immigration-Related Unfair Employment Practices (“Special Counsel”). The Special Counsel shall be appointed by the President for a term of four years, by and with the advice and consent of the Senate, pursuant to section 274B of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b. The Immigrant and Employee Rights Section shall be part of the Civil Rights Division of the Department of Justice, and the Special Counsel shall report directly to the Assistant Attorney General, Civil Rights Division.

(b) In carrying out the Special Counsel's responsibilities under section 274B of the INA, the Special Counsel is authorized to:

(1) Investigate charges of unfair immigration-related employment practices filed with the Immigrant and Employee Rights Section and, when appropriate, file complaints with respect to those practices before specially designated administrative law judges within the Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review, U.S. Department of Justice;

(2) Intervene in proceedings involving complaints of unfair immigration-related employment practices that are brought directly before such administrative law judges by parties other than the Special Counsel;

(3) Conduct, on the Special Counsel's own initiative, investigations of unfair immigration-related employment practices and, where appropriate, file complaints with respect to those practices before such administrative law judges;

(4) Conduct, handle, and supervise litigation in U.S. District Courts for judicial enforcement of subpoenas or orders of administrative law judges regarding unfair immigration-related employment practices;

(5) Initiate, conduct, and oversee activities relating to the dissemination of information to employers, employees, and the general public concerning unfair immigration-related employment practices;

(6) Establish such regional offices as may be necessary, in accordance with regulations of the Attorney General;

(7) Perform such other functions as the Assistant Attorney General, Civil Rights Division may direct; and

(8) Delegate to any subordinate any of the authority, functions, or duties vested in the Special Counsel.

■ 3. Revise part 44 to read as follows:

PART 44—UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

Sec.
44.100 Purpose.
44.101 Definitions.
44.102 Computation of time.
44.200 Unfair immigration-related employment practices.
44.201 [Reserved].
44.202 Counting employees for jurisdictional purposes.
44.300 Filing a charge.
44.301 Receipt of charge.
44.302 Investigation.
44.303 Determination.
44.304 Special Counsel acting on own initiative.
44.305 Regional offices.

Authority: 8 U.S.C. 1103(a)(1), (g), 1324b.

§ 44.100 Purpose.

The purpose of this part is to implement section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b), which prohibits certain unfair immigration-related employment practices.

§ 44.101 Definitions.

For purposes of 8 U.S.C. 1324b and this part:

(a) *Charge* means a written statement in any language that—

(1) Is made under oath or affirmation;

(2) Identifies the charging party's name, address, and telephone number;

(3) Identifies the injured party's name, address, and telephone number, if the charging party is not the injured party;

(4) Identifies the name and address of the person or other entity against whom the charge is being made;

(5) Includes a statement sufficient to describe the circumstances, place, and date of an alleged unfair immigration-related employment practice;

(6) Indicates whether the basis of the alleged unfair immigration-related employment practice is discrimination based on national origin, citizenship status, or both; or involves intimidation or retaliation; or involves unfair documentary practices;

(7) Indicates the citizenship status of the injured party;

(8) Indicates, if known, the number of individuals employed on the date of the alleged unfair immigration-related employment practice by the person or other entity against whom the charge is being made;

(9) Is signed by the charging party and, if the charging party is neither the injured party nor an officer of the Department of Homeland Security, indicates that the charging party has the authorization of the injured party to file the charge;

(10) Indicates whether a charge based on the same set of facts has been filed with the Equal Employment Opportunity Commission, and if so, the specific office and contact person (if known); and

(11) Authorizes the Special Counsel to reveal the identity of the injured or charging party when necessary to carry out the purposes of this part.

(b) *Charging party* means—

(1) An injured party who files a charge with the Special Counsel;

(2) An individual or entity authorized by an injured party to file a charge with the Special Counsel that alleges that the injured party is adversely affected directly by an unfair immigration-related employment practice; or

(3) An officer of the Department of Homeland Security who files a charge with the Special Counsel that alleges that an unfair immigration-related employment practice has occurred or is occurring.

(c) *Citizenship status* means an individual's status as a U.S. citizen or national, or non-U.S. citizen, including the immigration status of a non-U.S. citizen.

(d) *Complaint* means a written submission filed with the Office of the Chief Administrative Hearing Officer (OCAHO) under 28 CFR part 68 by the Special Counsel or by a charging party, other than an officer of the Department of Homeland Security, alleging one or more unfair immigration-related employment practices under 8 U.S.C. 1324b.

(e) *Discriminate* as that term is used in 8 U.S.C. 1324b means the act of intentionally treating an individual differently from other individuals, regardless of the explanation for the differential treatment, and regardless of whether such treatment is because of animus or hostility.

(f) The phrase "for purposes of satisfying the requirements of section 1324a(b)," as that phrase is used in 8 U.S.C. 1324b(a)(6), means for the purpose of completing the employment eligibility verification form designated in 8 CFR 274a.2, or for the purpose of making any other efforts to verify an individual's employment eligibility, including the use of "E-Verify" or any other electronic employment eligibility verification program.

(g) An act done "for the purpose or with the intent of discriminating against an individual in violation of paragraph (1)," as that phrase is used in 8 U.S.C. 1324b(a)(6), means an act of intentionally treating an individual differently based on national origin or citizenship status in violation of 8 U.S.C. 1324b(a)(1), regardless of the explanation for the differential treatment, and regardless of whether such treatment is because of animus or hostility.

(h) *Hiring* means all conduct and acts during the entire recruitment, selection, and onboarding process undertaken to make an individual an employee.

(i) *Injured party* means an individual who claims to be adversely affected directly by an unfair immigration-related employment practice.

(j) The phrase "more or different documents than are required under such section," as that phrase is used in 8 U.S.C. 1324b(a)(6), includes any limitation on an individual's choice of acceptable documentation to present to satisfy the requirements of 8 U.S.C. 1324a(b).

(k) *Protected individual* means an individual who—

(1) Is a citizen or national of the United States;

(2) Is an alien who is lawfully admitted for permanent residence, other than an alien who—

(i) Fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization, or, if later, within six months after November 6, 1986; or

(ii) Has applied on a timely basis, but has not been naturalized as a citizen within two years after the date of the application, unless the alien can establish that he or she is actively pursuing naturalization, except that time consumed in the Department of Homeland Security's processing of the application shall not be counted toward the two-year period;

(3) Is an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a) or 8 U.S.C. 1255a(a)(1);

(4) Is admitted as a refugee under 8 U.S.C. 1157; or

(5) Is granted asylum under 8 U.S.C. 1158.

(l) *Recruitment or referral for a fee* has the meaning given the terms "recruit for a fee" and "refer for a fee," respectively, in 8 CFR 274a.1, and includes all conduct and acts during the entire recruitment or referral process.

(m) *Respondent* means a person or other entity who is under investigation by the Special Counsel, as identified in the written notice required by § 44.301(a) or § 44.304(a).

(n) *Special Counsel* means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under 8 U.S.C. 1324b, or a duly authorized designee.

§ 44.102 Computation of time.

When a time period specified in this part ends on a day when the Federal Government in Washington, DC is closed (such as on weekends and Federal holidays, or due to a closure for all or part of a business day), the time period shall be extended until the next full day that the Federal Government in Washington, DC is open.

§ 44.200 Unfair immigration-related employment practices.

(a)(1) *General.* It is an unfair immigration-related employment practice under 8 U.S.C. 1324b(a)(1) for a person or other entity to intentionally discriminate or to engage in a pattern or practice of intentional discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(i) Because of such individual's national origin; or

(ii) In the case of a protected individual, as defined in § 44.101(k), because of such individual's citizenship status.

(2) *Intimidation or retaliation.* It is an unfair immigration-related employment practice under 8 U.S.C. 1324b(a)(5) for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under 8 U.S.C. 1324b or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that section.

(3) *Unfair documentary practices.* It is an unfair immigration-related employment practice under 8 U.S.C. 1324b(a)(6) for—

(i) A person or other entity, for purposes of satisfying the requirements of 8 U.S.C. 1324a(b), either—

(A) To request more or different documents than are required under § 1324a(b); or

(B) To refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual; and

(ii) To make such request or refusal for the purpose or with the intent of discriminating against any individual in violation of paragraph (1), regardless of whether such documentary practice is a condition of employment or causes economic harm to the individual.

(b) *Exceptions.* (1) Paragraph (a)(1) of this section shall not apply to—

(i) A person or other entity that employs three or fewer employees;

(ii) Discrimination because of an individual's national origin by a person or other entity if such discrimination is covered by 42 U.S.C. 2000e–2; or

(iii) Discrimination because of citizenship status which—

(A) Is otherwise required in order to comply with law, regulation, or Executive order; or

(B) Is required by Federal, State, or local government contract; or

(C) The Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(2) Notwithstanding any other provision of this part, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire an individual, or to recruit or refer for a fee an individual, who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

§ 44.201 [Reserved].

§ 44.202 Counting employees for jurisdictional purposes.

The Special Counsel will calculate the number of employees referred to in § 44.200(b)(1)(i) by counting all part-time and full-time employees employed on the date that the alleged discrimination occurred. The Special Counsel will use the 20 calendar week requirement contained in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e(b), for purposes of determining whether the exception of § 44.200(b)(1)(ii) applies, and will refer to the Equal Employment Opportunity Commission charges of national origin discrimination that the Special Counsel determines are covered by 42 U.S.C. 2000e–2.

§ 44.300 Filing a charge.

(a) Who may file. Charges may be filed by:

(1) Any injured party;

(2) Any individual or entity authorized by an injured party to file a charge with the Special Counsel alleging that the injured party is adversely affected directly by an unfair immigration-related employment practice; or

(3) Any officer of the Department of Homeland Security who alleges that an unfair immigration-related employment practice has occurred or is occurring.

(b) Charges shall be filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice. A charge is deemed to be filed on the date it is postmarked or the date on which the charging party otherwise delivers or transmits the charge to the Special Counsel.

(c) Charges may be sent by:

(1) U.S. mail;

(2) Courier service;

(3) Electronic or online submission; or

(4) Facsimile.

(d) No charge may be filed respecting an unfair immigration-related employment practice described in § 44.200(a)(1)(i) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this section, unless the charge is dismissed as being outside the scope of this part.

§ 44.301 Receipt of charge.

(a) Within 10 days of receipt of a charge, the Special Counsel shall notify the charging party and respondent by certified mail, in accordance with paragraphs (b) and (c) of this section, of the Special Counsel's receipt of the charge.

(b) The notice to the charging party shall specify the date on which the charge was received; state that the charging party, other than an officer of the Department of Homeland Security, may file a complaint before an administrative law judge if the Special Counsel does not do so within 120 days of receipt of the charge; and state that the charging party will have 90 days from the receipt of the letter of determination issued pursuant to § 44.303(b) by which to file such a complaint.

(c) The notice to the respondent shall include the date, place, and circumstances of the alleged unfair immigration-related employment practice.

(d)(1) If a charging party's submission is found to be inadequate to constitute a complete charge as defined in § 44.101(a), the Special Counsel shall notify the charging party that the charge is incomplete and specify what additional information is needed.

(2) An incomplete charge that is later deemed to be complete under this paragraph is deemed filed on the date the initial but inadequate submission is postmarked or otherwise delivered or transmitted to the Special Counsel, provided any additional information requested by the Special Counsel pursuant to this paragraph is postmarked or otherwise provided, delivered or transmitted to the Special Counsel within 180 days of the alleged occurrence of an unfair immigration-related employment practice or within 45 days of the date on which the charging party received the Special Counsel's request for additional information, whichever is later.

(3) Once the Special Counsel determines adequate information has been submitted to constitute a complete charge, the Special Counsel shall issue the notices required by paragraphs (b) and (c) of this section within 10 days.

(e) In the Special Counsel's discretion, the Special Counsel may deem a submission to be a complete charge even though it is inadequate to constitute a charge as defined in § 44.101(a). The Special Counsel may then obtain the additional information specified in § 44.101(a) in the course of investigating the charge.

(f) A charge or an inadequate submission referred to the Special Counsel by a federal, state, or local government agency appointed as an agent for accepting charges on behalf of the Special Counsel is deemed filed on the date the charge or inadequate submission was postmarked to or otherwise delivered or transmitted to that agency. Upon receipt of the referred charge or inadequate submission, the Special Counsel shall follow the applicable notification procedures for the receipt of a charge or inadequate submission set forth in this section.

(g) The Special Counsel shall dismiss a charge or inadequate submission that is filed more than 180 days after the alleged occurrence of an unfair immigration-related employment practice, unless the Special Counsel determines that the principles of waiver, estoppel, or equitable tolling apply.

§ 44.302 Investigation.

(a) The Special Counsel may seek information, request documents and answers to written interrogatories, inspect premises, and solicit testimony as the Special Counsel believes is necessary to ascertain compliance with this part.

(b) The Special Counsel may require any person or other entity to present Employment Eligibility Verification Forms ("Forms I–9") for inspection.

(c) The Special Counsel shall have reasonable access to examine the evidence of any person or other entity being investigated. The respondent shall permit access by the Special Counsel during normal business hours to such books, records, accounts, papers, electronic and digital documents, databases, systems of records, witnesses, premises, and other sources of information the Special Counsel may deem pertinent to ascertain compliance with this part.

(d) A respondent, upon receiving notice by the Special Counsel that it is under investigation, shall preserve all evidence, information, and documents potentially relevant to any alleged unfair immigration-related employment practices, and shall suspend routine or automatic deletion of all such evidence, information, and documents.

§ 44.303 Determination.

(a) Within 120 days of the receipt of a charge, the Special Counsel shall undertake an investigation of the charge and determine whether to file a complaint with respect to the charge.

(b) If the Special Counsel determines not to file a complaint with respect to such charge by the end of the 120-day period, or decides to continue the investigation of the charge beyond the 120-day period, the Special Counsel shall, by the end of the 120-day period, issue letters to the charging party and respondent by certified mail notifying both parties of the Special Counsel's determination.

(c) When a charging party receives a letter of determination issued pursuant to paragraph (b) of this section, the charging party, other than an officer of the Department of Homeland Security, may file a complaint directly before an administrative law judge in the Office of the Chief Administrative Hearing Officer (OCAHO) within 90 days after his or her receipt of the Special Counsel's letter of determination. The charging party's complaint must be filed with OCAHO as provided in 28 CFR part 68.

(d) The Special Counsel's failure to file a complaint with respect to such charge with OCAHO within the 120-day period shall not affect the right of the Special Counsel to continue to investigate the charge or later to bring a complaint before OCAHO.

(e) The Special Counsel may seek to intervene at any time in any proceeding brought by a charging party before OCAHO.

§ 44.304 Special Counsel acting on own initiative.

(a) The Special Counsel may, on the Special Counsel's own initiative, conduct investigations respecting unfair immigration-related employment practices when there is reason to believe that a person or other entity has engaged or is engaging in such practices, and shall notify a respondent by certified mail of the commencement of the investigation.

(b) The Special Counsel may file a complaint with OCAHO when there is reasonable cause to believe that an unfair immigration-related employment practice has occurred no more than 180 days prior to the date on which the Special Counsel opened an investigation of that practice.

§ 44.305 Regional offices.

The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out the Special Counsel's duties.

Dated: August 4, 2016.

Loretta E. Lynch,

Attorney General.

[FR Doc. 2016–18957 Filed 8–12–16; 8:45 am]

BILLING CODE 4410–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2012–0865; A–1–FRL–9950–59–Region 1]

Air Plan Approval; NH; Control of Volatile Organic Compound Emissions From Minor Core Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on October 4, 2012. The revision clarifies Reasonably Available Control Technology (RACT) requirements as they apply to minor core activities of volatile organic compound (VOC) sources. The intended effect of this action is to propose approval of these requirements into the New Hampshire SIP. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before September 14, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2012–0865 at *http://www.regulations.gov,* or via email to *Mackintosh.David@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David L. Mackintosh, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, tel. 617–918–1584, fax 617–918–0668, email *Mackintosh.David@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: August 1, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2016–19125 Filed 8–12–16; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Appendix C to Chapter 301, 304–2, 304–3, and 304–6

[FTR Case 2016–301; Docket No. 2016–0008, Sequence 1]

RIN 3090–AJ69

Federal Travel Regulation (FTR); Clarification of Payment in Kind for Speakers at Meetings and Similar Functions

AGENCY: Office of Government-wide Policy, U.S. General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the Federal Travel Regulation (FTR) to change the definition of "payment in kind." As proposed, the new definition would provide that a full or partial waiver of registration fees by an organizing entity of a meeting or similar function is not considered a payment in kind to the agency when employees speak, participate in a panel, or present at the meeting or similar function in their official capacities, and registration fees are waived for all speakers, panelists, or presenters. This proposed amendment would also make miscellaneous related corrections.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before October 14, 2016 to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by FTR Case 2016–301 by any of the following methods:

- *Federal eRulemaking Portals: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for "FTR Case 2016–301." Select the link "Comment Now" that corresponds with "FTR Case 2016–301" and follow the instructions provided at the screen. Please include your name, company name (if any), and "FTR Case 2016–301" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), Attn. Ms. Hada Flowers, 1800 F Street NW., Washington, DC 20405.
- *Instructions:* Please submit comments only and cite FTR Case 2016–301 in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jill Denning, Program Analyst, Office of Government-wide Policy, at 202–208–7642. Contact the Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, 202–501–4755, for information pertaining to status or publication schedules. Please cite FTR case 2016–301.

SUPPLEMENTARY INFORMATION:

A. Background

Under 31 U.S.C. 1353, as implemented in Federal Travel Regulation Chapter 304 (41 CFR chapter 304), agencies may accept payment of travel expenses from a non-Federal source for employees to attend meetings and similar functions. Currently, with respect to a waiver of registration fees, the FTR makes no distinction between employees who speak, serve on a panel, or deliver a presentation at a meeting or similar function, and other attendees.

Because employees speak at these types of events to further the missions of their agencies as a necessary and customary part of their work activities, GSA proposes to redefine the travel purpose codes found in Appendix C of Chapter 301, which agencies use for travel reporting purposes. GSA also proposes to change in Chapter 304 that payments in kind from non-Federal sources do not include waiver of registration-type fees for speakers, panelists, or presenters at these types of events when the fees are waived for all speakers, panelists, or presenters. The proposed amendment would permit an agency to accept a waived registration fee for the duration of a multi-day meeting or similar function, even if the employee is only presenting on one day. Other types of travel expenses paid for by a non-Federal source, such as transportation, lodging expenses, or other associated event- or similar function-related activities, will still need to be reviewed in accordance with the regulations stated in Chapter 304.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is a significant regulatory action, and therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

C. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This proposed rule is also exempt from Administrative Procedure Act per 5 U.S.C. 553 (a)(2), because it applies to agency management or personnel.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the Federal Travel Regulation do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Appendix C to Part 301, 304–2, 304–3, and 304–6

Government employees, travel and transportation expenses.

Dated: August 1, 2016.

Troy Cribb,

Associate Administrator, Office of Government-wide Policy.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, and 31 U.S.C. 1353, GSA proposes to amend 41 CFR Appendix C to chapter 301, and parts 304–2, 304–3, and 304–6 as set forth below:

PART 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

■ 1. The authority citation for 41 CFR part 301 continues to read as follows:

Authority: 5 U.S.C. 5707.

■ 2. Amend Appendix C to Chapter 301, in the first table by—

■ a. Revising the entry for Travel Purpose Identifier, next to the data element Mission (Operational), in the "description" column; and

■ b. Revising the entry for Travel Purpose Identifier, next to the data element Conference-Other Than Training, in the "description" column.

The revisions read as follows:

Appendix C to Chapter 301—Standard Data Elements for Federal Travel [Traveler Identification]

Group name	Data elements	Description
* *	* *	* * *
Travel Purpose Identifier	Mission (Operational)	Travel to a particular site in order to perform operational or managerial activities. Travel to attend a meeting to discuss general agency operations, review status reports, or discuss topics of general interest. *Examples:* Employee's day-to-day operational or managerial activities, as defined by the agency, to include, but not be limited to: Hearings, site visit, information meeting, inspections, audits, investigations, and examinations. Travel to a conference to serve as a speaker, panelist, or provide information in one's official capacity.
* *	* *	* * *
	Conference—Other Than Training	Travel performed in connection with a prearranged meeting, retreat, convention, seminar, or symposium for consultation or exchange of information or discussion. Agencies have to distinguish between conference and training attendance and use the appropriate identifier (see Training below). *Examples:* To participate in a planned program as a host, planner, or others designated to oversee the conference or attendance with no formal role, or as an exhibitor.
* *	* *	* * *

* * * * *

PART 304–2—DEFINITIONS

■ 3. The authority citation for part 304–2 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

■ 4. Amend § 304–2.1 by—

■ a. Removing from the definition "Meeting(s) or similar functions (meeting)", introductory text, "(*i.e.,* a function that is essential to an agency's mission)".

■ b. Revising the second sentence of the definition "Payment in kind"; and

■ c. Revise the last two sentences of the definitions "Travel, subsistence, and related expenses (travel expenses)".

The revisions read as follows:

§ 304–2.1 What definitions apply to this chapter?

* * * * *

Payment in kind * * * Payment in kind also includes waiver of any fees that a non-Federal source collects from meeting attendees (*e.g.,* registration fees), unless the employee attending the meeting or similar function is serving as a speaker, panelist, or presenter, and the fee is waived for all speakers, panelists, or presenters at the event.

* * * * *

Travel, subsistence, and related expenses (travel expenses) * * * The Foreign Affairs Manual is available for download from the internet at *FAM.state.gov.* The Joint Travel Regulations are available for download at *http://www.defensetravel.dod.mil/site/travelreg.cfm.*

PART 304–3—EMPLOYEE RESPONSIBILITY

■ 5. The authority citation for part 304–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

■ 6. Add § 304–3.10 to read as follows:

§ 304–3.10 If I am asked or assigned to participate as a speaker, panelist, or presenter at a meeting or similar function, and the organizing entity of the event waives the registration fee for all speakers, panelists, or presenters, is that a payment in kind?

No. A full or partial waiver of a registration fee by the organizing entity of the event is not a payment in kind when provided to speakers, panelists, or presenters.

Note to § 304–3.10: If registration fees are not waived for all speakers, panelists, or presenters, and instead are waived only for the Federal speakers, panelists, or presenters, then the waiver is considered to be a payment in kind, and must be reviewed under the procedures set forth in this chapter.

PART 304–6—PAYMENT GUIDELINES

■ 7. The authority citation for part 304–6 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

■ 8. Amend § 304–6.6 by revising paragraph (a) to read as follows:

§ 304–6.6 How do we determine the value of payments in kind that are to be reported on Standard Form (SF) 326?

* * * * *

(a) For conference, training, or similar fees waived or paid by a non-Federal source, you must report the amount charged to other participants, unless the employee attended the meeting or similar function as a speaker, panelist, or presenter, and the registration fee was waived for all speakers, panelists, or presenters by the organizing entity of the event.

* * * * *

[FR Doc. 2016–18556 Filed 8–12–16; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2399–P]

RIN 0938–AS92

Medicaid Program; Disproportionate Share Hospital Payments—Treatment of Third Party Payers in Calculating Uncompensated Care Costs

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule addresses the hospital-specific limitation on Medicaid disproportionate share hospital (DSH) payments under section 1923(g)(1)(A) of the Social Security Act (Act), and the application of such limitation in the annual DSH audits required under section 1923(j) of the Act, by clarifying that the hospital-specific DSH limit is based only on uncompensated care costs. Specifically, this rule would make clearer in the text of the regulation an existing interpretation that uncompensated care costs include only those costs for Medicaid eligible individuals that remain after accounting for payments received by hospitals by or on behalf of Medicaid eligible individuals, including Medicare and other third party payments that compensate the hospitals for care furnished to such individuals. As a result, the hospital-specific limit calculation would reflect only the costs for Medicaid eligible individuals for which the hospital has not received payment from any source (other than state or local governmental payments for indigent patients).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. September 14, 2016.

ADDRESSES: In commenting please refer to file code CMS–2399–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2399–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2399–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Wendy Harrison, (410) 786–2075 and Rory Howe, (410) 786–4878.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. Legislative History

Title XIX of the Act authorizes the Secretary of the Department of Health and Human Services (the Secretary) to provide grants to states to help finance programs furnishing medical assistance (state Medicaid programs) to specified groups of eligible individuals in accordance with an approved state plan. "Medical Assistance" is defined at section 1905(a) of the Act as payment for part or all of the cost of a list of specified care for eligible individuals. Section 1902(a)(13)(A)(iv) of the Act requires that payment rates for hospitals take into account the situation of hospitals that serve a disproportionate share of low-income patients with special needs. Section 1923 of the Act contains more specific requirements related to payments for such disproportionate share hospitals (DSH) payments. These specific statutory requirements include aggregate state level limits, hospital-specific limits, qualification requirements, and auditing requirements.

Under section 1923(b) of the Act, a hospital meeting the minimum qualifying criteria in section 1923(d) of the Act is deemed as a DSH if it meets certain criteria. States have the option to define disproportionate share hospitals under the state plan using alternative qualifying criteria as long as the qualifying methodology comports with the deeming requirements of section 1923(b) of the Act. Subject to certain federal payment limits, states are afforded flexibility in setting DSH state plan payment methodologies to the extent that these methodologies are consistent with section 1923(c) of the Act.

Section 1923(f) of the Act limits federal financial participation (FFP) for total statewide DSH payments made to eligible hospitals in each federal fiscal year (FY) to the amount specified in an annual DSH allotment for each state. These allotments essentially establish a finite pool of available federal DSH funds that states use to pay the federal portion of payments to all qualifying hospitals in each state. As states often use most or all of their federal DSH allotment, in practice, if one hospital gets more DSH funding, other DSH-eligible hospitals in the state get less.

B. Hospital-Specific DSH Limit

Section 13621 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93), which was signed into law on August 10, 1993, added section 1923(g) of the Act, limiting Medicaid DSH payments during a year to a qualifying hospital to the amount of eligible uncompensated care costs during that same year. The Congress enacted the hospital-specific limit on DSH payments in response to reports that some hospitals received

DSH payment adjustments that exceeded ''the net costs, and in some instances the total costs, of operating the facilities.'' (H.R. Rep. No. 103–111, at 211–12 (1993), reprinted in 1993 U.S.C.C.A.N. 278, 538–39.) Such excess payments were inconsistent with the purpose of the Medicaid DSH payment, which is to ameliorate the real economic burden faced by hospitals that treat a disproportionate share of low-income patients and to ensure continued access to care for Medicaid patients. Accordingly, Congress imposed a hospital-specific limit that restricts Medicaid DSH payments to qualifying hospitals to the costs incurred by the hospital for providing inpatient and outpatient hospital services during the year to Medicaid eligible patients and individuals who have no health insurance or other source of third party coverage for the services provided during the year. Costs for providing services are ''as determined by the Secretary'' and are to be net of applicable payments received for those services.

The Congress revisited the DSH payment requirements in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Public Law 108–173, enacted on December 8, 2003. The MMA added section 1923(j) to the Act, which requires states to report specified information about their DSH payments, including independent, certified audits that, among other elements, are required to review compliance with the hospital-specific limits under section 1923(g)(1)(A) of the Act. Significantly, section 1923(j)(2)(B) of the Act provides a gloss on section 1923(g)(1)(A), by specifying that the audits must verify that ''Only the uncompensated care costs of providing inpatient hospital and outpatient hospital services to individuals described in paragraph (1)(A) of such subsection [1923(g) of the Act] are included in the calculation of the hospital-specific limits under such subsection.''

Until the establishment of an audit requirement, there was no standardization among the states as to how the hospital-specific limit was calculated. In the late 1990's and early 2000's the Government Accountability Office (GAO) and the U.S. Department of Health and Human Services Office of Inspector General (OIG) issued a series of reports focusing on the hospital-specific DSH limit. Among other findings, the GAO and OIG reports identified multiple instances where states included unallowable cost or did not account for costs net of applicable payments when determining the hospital-specific limits. These reviews and audits led to the enactment, as part of the MMA, of the audit requirements at section 1923(j) of the Act. Section 1923(j) of the Act not only required that we promulgate standardized audit methods and procedures, it also provided clarity on how the hospital-specific limit should be applied. The Congress explicitly addressed any ambiguity about whether the hospital-specific limit could include costs that have been compensated by payers other than the individual or the Medicaid program. Section 1923(j)(2)(C) of the Act specifically provides that only the uncompensated care costs of providing inpatient hospital and outpatient hospital services to individuals (described in section 1923(g)(1)(A of the Act) are included in the calculation of the hospital-specific limits under section 1923(g)(1)(A) of the Act. This provision makes clear that the Congress itself specified the hospital-specific limit at section 1923(g)(1) of the Act to include only uncompensated care costs.

As a result, it is clear that the Congress intended that FFP is not available for DSH payments that exceed a hospital's hospital-specific limit. The hospital-specific limit prevents hospitals from receiving DSH payments above the level of any net uncompensated cost incurred in the treatment of Medicaid eligible or uninsured individuals.

As indicated in a 2008 final rule describing the required DSH audit process, 73 FR 77904, 77926 (December 19, 2008), to be considered an inpatient or outpatient hospital service for purposes of Medicaid DSH, a service must meet the federal and state definitions of an inpatient hospital service or outpatient hospital service and must be included in the state's definition of an inpatient hospital service or outpatient hospital service under the approved state plan and reimbursed under the state plan as an inpatient hospital or outpatient hospital service. While a state may have some flexibility to define the scope of inpatient or outpatient hospital services covered by the state plan, a state must use consistent definitions. Hospitals may engage in any number of activities, or may furnish practitioner, nursing facility, or other services to patients that are not within the scope of inpatient hospital services or outpatient hospital services and are not paid as such. These services are not considered inpatient or outpatient hospital services for purposes of calculating the Medicaid hospital-specific DSH limit. In passing OBRA 93 and the hospital-specific DSH limit, the Congress contemplated that hospitals with ''large numbers of privately insured patients through which to offset their operating losses on the uninsured'' may not warrant Medicaid DSH payments (H. Rep. 103–111, p. 211).

C. The 2008 DSH Final Rule and Subsequent Policy Guidance

Section 1001 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) required annual state reports and audits to ensure the appropriate use of Medicaid DSH payments and compliance with the DSH limit imposed at section 1923(g) of the Act.

In the August 26, 2005, **Federal Register** we published a proposed rule entitled, ''Medicaid Program; Disproportionate Share Hospital Payments'' (70 FR 50262) to implement the annual DSH audit and reporting requirements established or amended by the MMA. During the public comment period, one commenter requested clarification regarding the treatment of individuals dually eligible for Medicaid and Medicare for purposes of calculating the hospital-specific DSH limit. We responded to this comment in the final rule published in the **Federal Register** on December 19, 2008, entitled ''Medicaid Disproportionate Share Hospital Payments'' (73 FR 77904) (herein referred to as the 2008 DSH final rule). As section 1923(g) of the Act limits DSH payments on a hospital-specific basis to ''uncompensated costs,'' the response to the comment clarified that all costs and payments associated with individuals dually eligible for Medicare and Medicaid, including Medicare payments received by the hospital on behalf of the patients, must be included in the calculation of the hospital-specific DSH limit. The extent to which a hospital receives Medicare payments for services rendered to Medicaid eligible patients must be accounted for in determining uncompensated care costs for those services.

Following the publication of the 2008 DSH final rule, we received numerous questions from interested parties regarding the treatment of costs and payments associated with dual eligibles and Medicaid eligible individuals who also have a source of third party coverage (for example, coverage from a private insurance company) for purposes of calculating uncompensated care costs. We posted additional policy guidance titled ''*Additional Information on the DSH Reporting and Audit Requirements*'' on the Medicaid Web site at *https://www.medicaid.gov/medicaid-chip-program-information/by-topics/financing-and-reimbursement/*

downloads/part-1-additional-info-on-dsh-reporting-and-auditing.pdf providing that all costs and payments associated with dual eligibles and individuals with a source of third party coverage must be included in calculating the hospital-specific DSH limit, as section 1923(g) of the Act limits DSH payments to ''uncompensated'' care costs. This additional guidance was based upon the policy articulated in the 2008 final rule and sub-regulatory guidance issued to all state Medicaid directors on August 16, 2002.

In the August 16, 2002, letter to state Medicaid directors, we directed that when a state calculates the uninsured costs and the Medicaid shortfall for the OBRA 93 uncompensated care cost limits, it must reflect a hospital's costs of providing services to Medicaid patients and the uninsured, net of Medicaid payments (except DSH) made under the state plan and net of third party payments. Medicaid payments, include but are not limited to regular Medicaid fee-for-service rate payments, any supplemental or enhanced payments and Medicaid managed care organization payments. The guidance also stated that not recognizing these payments would overstate a hospital's amount of uninsured costs and Medicaid shortfall, thus inflating the OBRA 93 uncompensated care cost limits for that particular hospital. As state DSH payments are limited to an annual federal allotment, this policy is necessary to ensure that limited DSH resources are allocated to hospitals that have a net financial shortfall in serving Medicaid patients.

Prior to the 2008 final rule, some states and hospitals were excluding both costs and payments associated with Medicaid eligible individuals with third party coverage, including Medicare, when calculating hospital-specific DSH limits (or were including costs while not including payments). This practice led to the artificial inflation of uncompensated care costs and, correspondingly, of hospital-specific DSH limits and permitted some hospitals to be paid based on the same costs by two payers—once by Medicare or other third party payer and once by Medicaid. The clarification included in the final rule and associated implementation promotes fiscal integrity and equitable distribution of DSH payments among hospitals by preventing payment to DSH hospitals based on costs that are covered by Medicare or a private insurer. It also promotes program integrity by ensuring that hospitals receive Medicaid DSH payments only up to the actual uncompensated care costs incurred in providing inpatient and outpatient hospital services to Medicaid eligible individuals or individuals with no health insurance or other source of third party coverage.

Given the timing of the final rule and audit requirements, we recognized that there could have been a retroactive impact on some states and hospitals if the requirements had been imposed immediately. To ensure that states and hospitals did not experience any immediate adverse fiscal impact due to the publication of the DSH audit and reporting final rule and to foster development and refinement of auditing techniques, we included a transition period in the final rule. During this transition period, states were not required to repay FFP associated with Medicaid DSH overpayments identified through the annual DSH audits. The final rule allowed for a 3 year period between the close of the state plan rate year and when the final audit was due to us, which meant that audits for state plan rate year 2008 were not due to us until December 31, 2011. Recognizing that states would be auditing state plan rate years that closed prior to publication of the final rule, we stated in the final rule that there would be no financial implications until the audits for state plan rate year 2011 were due to us on December 31, 2014. This allowed states and hospitals to adjust to the audit requirements and make adjustments as necessary. This resulted in a transition period for the audits associated with state plan rate years 2005 through 2010.

The 2008 DSH final rule also reiterated our policy that costs and payments are treated on an aggregate, hospital-specific basis. For purposes of this hospital-specific limit calculation, any Medicaid payments, including but not limited to regular Medicaid fee-for-service rate payments, supplemental/enhanced Medicaid payments, and Medicaid managed care organization payments, made to a disproportionate share hospital for furnishing inpatient and outpatient hospital services to Medicaid eligible individuals, which are in excess of the Medicaid incurred costs for these services, are applied against the total uncompensated care costs of furnishing inpatient and outpatient hospital services to individuals with no source of third party coverage for such services.

In this policy verification, we explicitly acknowledge there will be instances where Medicaid payments will be greater than the cost of treating Medicaid eligible patients. However, to avoid overstating the hospital-specific limit, we nonetheless require that all Medicaid payments be included in the calculation, explaining that any ''excess'' payments will be applied against the uncompensated care costs that result from the uninsured calculation. The same principle applies to payments received from third party payers that exceed the cost of the service provided to a particular Medicaid eligible individual. All third party payments (including, but not limited to, payments by Medicare and private insurance) must be included in the calculation of uncompensated care costs for purposes of determining the hospital-specific DSH limit, regardless of what the Medicaid incurred cost is for treating the Medicaid eligible individual. For example, if a hospital treats two Medicaid eligible patients at a cost of $2,000 and receives a $500 payment from a third party for each individual and a $100 payment from Medicaid for each individual, the total uncompensated care cost to the hospital for is $800, regardless of whether the payments received for one patient exceeded the cost of providing the service to that individual.

Subsequent to both the 2008 DSH final rule and the interpretive issued guidance, multiple states, hospitals, and other stakeholders expressed concern regarding this policy and requested clarification. In addition to requests for clarification, some states have challenged this policy. We have disapproved one state plan amendment proposing to exclude the portion of a Medicare payment that exceeds the cost providing a service to a dual eligible and one state plan amendment proposing to exclude the portion of a third party commercial that exceeds the cost providing a service to a Medicaid eligible individual with private insurance coverage. Additionally, some hospitals and state governments have sued us regarding the treatment of third party payers in calculating uncompensated care costs.

In light of the statutory requirement limiting DSH payments on a hospital-specific basis to uncompensated care costs, it is inconsistent with the statute to assist hospitals with costs that have already been compensated by third party payments. This proposed rule is designed to reiterate the policy and make explicit within the terms of the regulation that all costs and payments associated with dual eligibles and individuals with a source of third party coverage must be included in calculating the hospital-specific DSH limit. This policy is necessary to ensure that only actual uncompensated care costs are included in the Medicaid hospital-specific DSH limit. And, because state DSH payments are limited to an annual federal allotment, this policy is also necessary to ensure that limited DSH resources are allocated to hospitals that have a net financial shortfall in serving Medicaid patients.

In a simplified example, consider a state that has only two hospitals. The first hospital treated only patients who were either uninsured or eligible for Medicaid, and received no payments other than from Medicaid. The hospital-specific limit for this hospital would be equal to the hospital's total costs of treating its patients through inpatient hospital or outpatient hospital services minus the non-DSH Medicaid payments. The second hospital, on the other hand, treated only patients who were either uninsured or dually eligible for Medicaid and Medicare, and received no payments other than from Medicaid and Medicare. Under 1902(a)(13)(A)(iv) of the Act, the "situation" of the second hospital that receives comparatively generous payments from Medicare for the dual eligibles is relevantly different than the "situation" of the first hospital that has not received such payments. Our policy—that Medicare and other third party payments must be taken into account when determining a hospital's costs for the purpose of calculating Medicaid DSH payments—ensures that the DSH payment reflects the real economic burden of hospitals that treat a disproportionate share of low-income patients (*i.e.* the "situation" of the hospitals). Turning back to the example, the hospital-specific limit for the second hospital must take into account both the Medicaid and Medicare payments. If the hospital-specific limit did not take into account the Medicare payments, the second hospital would be able to receive DSH dollars in excess of its uncompensated care costs. As federal DSH funding is limited by the state-wide DSH allotment, the excess DSH payments to the second hospital may be at the expense of the first hospital, which could otherwise receive these DSH dollars.

II. Specific Proposed Regulatory Changes

A. Treatment of Payments Associated With Dual Eligibles and Medicaid Eligible Individuals With a Source of Third Party Coverage Under Section 1923(g) of the Act

We are proposing to clarify the hospital-specific limitation on Medicaid DSH payments under section 1923(g)(1)(A) of the Act and annual DSH audit requirements under section 1923(j) of the Act. Specifically, this rule proposes to modify the terms of the current regulation to make it explicit that "costs" for purposes of calculating hospital-specific DSH limits are costs net of third-party payments received.

We are proposing at § 447.299 to clarify the definition of "Total cost of care for Medicaid IP/OP services" to specify that the total annual costs of inpatient hospital and outpatient hospital (IP/OP) services must account for all third party payments, including, but not limited to payments by Medicare and private insurance.

We are aware of at least one court that has questioned whether it is a permissible interpretation of the statute to take third party payments into account when calculating the uncompensated care costs of treating Medicaid patients. The court reasoned that because Congress had expressly stated that costs must be net of Medicaid payments, it was unreasonable to interpret the statute as allowing other payments, not specifically mentioned, to be taken into account. At this time, we respectfully disagree. We believe that our interpretation—that all third party payments should be taken into account—better reflects the real economic burden of hospitals that treat a disproportionate share of low-income patients, and accordingly, better facilitates the Congressional directive of section 1923 of the Act in general and the hospital-specific limit in particular. Additionally, we believe that the statutory language indicating that costs are "as determined by the Secretary" gives us the discretion to take Medicare and other third party payments into account when determining a hospital's costs for the purpose of calculating Medicaid DSH payments. Nevertheless, in light of the court's opinion, we request comments on this issue.

III. Collection of Information Requirements

This document does not impose new information collection and recordkeeping requirements, though states will continue to be required to meet annual reporting requirements in 42 CFR 447.299. The burden for these requirements is currently approved under OMB #0938–0746 with an expiration date of March 31, 2017. Consequently, this proposed rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

A. Statement of Need

This proposed regulation would ensure that only the uncompensated care costs for covered services provided to Medicaid eligible individuals are included in the calculation of the hospital-specific DSH limit, as required by section 1923(g) of the Act.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96 354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a rule: (1) (Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief for small entities, and if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $7.5 million to $38.5 million in any 1 year).

We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that is approximately $146 million. Since this rule would not mandate spending costs on state, local, or tribal governments in the aggregate, or by the private sector over the threshold of $146 million or more in any 1 year, the requirements of the UMRA are not applicable.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. Since this regulation does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

C. Anticipated Effects

1. Effects on State Medicaid Programs

Because this is not a change in policy, we do not anticipate that this proposed rule would have significant financial effects on state Medicaid programs. This rule would only make explicit within the terms of the regulation that "costs" for purposes of section 1923(g) of the Act are costs net of third-party payments.

2. Effects on Other Providers

Because this is not a change in policy, we do not anticipate that this proposed rule would have significant financial effects on other providers. This rule would only make explicit within the regulation that "costs" for purposes of section 1923(g) of the Act are costs net of amounts that have been paid by third parties and will ensure a more equitable distribution of Medicaid DSH payments within each state.

D. Alternatives Considered

We considered not proposing this rule. However, numerous states and other stakeholders have requested clarification regarding this requirement. Accordingly, we are proposing to make explicit within the terms of our regulation our existing policy that implements section (j) of the Act, in part.

Additionally, we considered issuing additional policy guidance through sub-regulatory means, such as a letter to all state Medicaid directors. However, we anticipate that modifying the regulatory text of 42 CFR part 447 is as clear and comprehensive as possible on this issue, avoiding any need for future clarification.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 447—PAYMENTS FOR SERVICES

■ 1. The authority citation for part 447 continues as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 447.299 is amended by revising paragraph (c)(10) to read as follows:

§ 447.299 Reporting requirements.

* * * * *

(c) * * *

(10) *Total Cost of Care for Medicaid IP/OP Services.* The total annual costs incurred by each hospital for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals. The total annual costs are determined on a hospital-specific basis, not a service-specific basis. For purposes of this section, costs—

(i) Are defined as costs net of third-party payments, including, but not limited to, payments by Medicare and private insurance.

(ii) Must capture the total burden on the hospital of treating Medicaid eligible patients prior to payment by Medicaid. Thus, costs must be determined in the aggregate and not by estimating the cost of individual patients. For example, if a hospital treats two Medicaid eligible patients at a cost of $2,000 and receives a $500 payment from a third party for each individual, the total cost to the hospital for purposes of this section is $1,000, regardless of whether the third party payments received for one patient exceeds the cost of providing the service to that individual.

* * * * *

Dated: July 19, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: July 29, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–19107 Filed 8–12–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 28

[Docket No. USCG–2012–0025]

RIN 1625–AB85

Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; extension of public comment period.

SUMMARY: The Coast Guard is extending, for 90 days, the period for submitting public comments on the notice of proposed rulemaking (NPRM). The extension responds to a request made by the public.

DATES: The comment period for the NPRM published on June 21, 2016 (81 FR 40437) is extended. Comments and related material must be submitted on or before December 18, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0025 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

Collection of Information. You must submit comments on the collection of information discussed in section VII.D of the NPRM both to the Coast Guard's docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget. OIRA submissions can use one of the listed methods.

- *Email (preferred)—oira_submission@omb.eop.gov* (include the docket number and "Attention: Desk Officer for Coast Guard, DHS" in the subject line of the email).
- *Fax*—202–395–6566.
- *Mail*—Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Jack Kemerer, Chief, Fishing Vessels Division (CG–CVC–3), Office of Commercial Vessel Compliance (CG–CVC), Coast Guard; telephone 202–372–1249, email *Jack.A.Kemerer@uscg.mil.*

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

B. Regulatory History and Information

We published the NPRM for this rulemaking on June 21, 2016 (81 FR 40437). It proposed to align the commercial fishing industry vessel regulations with the mandatory provisions of 2010 and 2012 legislation passed by Congress that took effect upon enactment. The alignments would change the applicability of current regulations, and add new requirements for safety equipment, vessel examinations, vessel safety standards, the documentation of maintenance, and the termination of unsafe operations. The NPRM announced a 90-day public comment period ending September 19, 2016. We have received requests for an extension of the comment period, which we have decided to grant in light of the importance of our proposed changes to the regulations, and to provide ample opportunity for commercial fishermen to review and provide their comments. With this extension, the total length of the public comment period will now be 180 days.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: August 9, 2016.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2016–19272 Filed 8–12–16; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 501 and 535

[Docket No. 16–04]

RIN 3072–AC54

Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission is seeking public comments on proposed modifications to its rules governing agreements by or among ocean common carriers and/or marine terminal operators subject to the Shipping Act of 1984 and its rules on the delegation of authority to and redelegation of authority by the Director, Bureau of Trade Analysis. These proposed modifications were developed in conformity with the objectives of the 2011 Executive Order to independent regulatory agencies that aims to promote a regulatory system that protects public health, welfare, safety and our environment while promoting economic growth, innovation, competitiveness and job creation.

DATES: Submit comments on or before: October 17, 2016. In compliance with the Paperwork Reduction Act, the Commission is also seeking comment on revisions to an information collection. See the Paperwork Reduction Act section under Regulatory Analyses and Notices below. Please submit all comments relating to the revised information collection to the Commission and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section on or before October 17, 2016. Comments to OMB are most useful if submitted within 30 days of publication.

ADDRESSES: You may submit comments by the following methods:

- *Email: secretary@fmc.gov.* Include in the subject line: "Docket 16–04, [Commentor/Company name]."

Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

- *Mail:* Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001.

Docket: For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: *http://www.fmc.gov/16-04.*

Confidential Information: The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked "Confidential-Restricted," and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state "Public Version—confidential materials excluded" on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

FOR FURTHER INFORMATION CONTACT: For questions regarding submitting comments or the treatment of confidential information, contact Karen V. Gregory, Secretary. *Phone:* (202) 523–5725. *Email: secretary@fmc.gov.* For technical questions, contact Florence A. Carr, Director, Bureau of Trade Analysis. *Phone:* (202) 523–5796. *Email: tradeanalysis@fmc.gov.* For legal questions, contact Tyler J. Wood, General Counsel. *Phone:* (202) 523–5740. *Email: generalcounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Maritime Commission (FMC or Commission) issued an Advance Notice of Proposed Rulemaking (ANPR) to obtain public comments on proposed modifications to its regulations in 46 CFR part 535, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984,* and 46 CFR 501.27, *Delegation to and redelegation by the Director, Bureau of Trade Analysis.* 81 FR 10188 (Feb. 29, 2016). The ANPR was issued pursuant to Executive Order 13579 (E.O. 13579), *Regulation and Independent Regulatory Agencies* (July 11, 2011), and the Commission's corresponding *Plan for the Retrospective Review of Existing Rules.*[1] Under this plan, the Commission requested and received comments on how to improve its existing regulations and programs. With respect to part 535, comments with specific recommendations on regulatory modifications were submitted by ocean carrier members of major discussion agreements effective under the Shipping Act.[2]

The proposed modifications in the ANPR were based on the Commission's comprehensive review of its regulations in parts 501 and 535, including review of the modifications recommended in the comments submitted by the carriers. In the ANPR, the Commission sought public comments on possible changes to the following regulations: (1) The definition of capacity rationalization in § 535.104(e), a new waiting period exemption for space charter agreements in § 535.308, and the waiting period exemption for low market share agreements in § 535.311; (2) the agreement filing exemption of marine terminal services agreements in § 535.309; (3) the standards governing complete and definite agreements in § 535.402 and agreement activities that may be conducted without further filing in § 535.408; (4) the Information Form requirements in subpart E of part 535; (5) the filing of comments on agreements in § 535.603 and the request for additional information on agreements in § 535.606; (6) the agreement reporting requirements in subpart G of part 535; and (7) non-substantive modifications to update and clarify the regulations in parts 501 and 535.

In response to the ANPR, seven sets of comments were received from interested parties. These parties are the ocean common carriers and agreements (carriers);[3] the National Association of Waterfront Employers (NAWE); the Pacific Merchant Shipping Association (PMSA); the Port of NY/NJ Sustainable Terminal Services Agreement, and the Port of NY/NJ-Port Authority/Marine Terminal Operator Agreement (Port of NY/NJ); the West Coast MTO Agreement, the Oakland MTO Agreement, and their members (WCMTOA/OAKMTOA), the South Carolina Port Authority (SCPA); and the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA). Under this Notice of Proposed Rulemaking (NPR), the Commission addresses the comments to the ANPR and seeks further public comments on the proposed modifications to its regulations in parts 501 and 535.

II. The Definition of Capacity Rationalization in § 535.104(e), a New Exemption for Space Charter Agreements in § 535.308, and the Exemption for Low Market Share Agreements in § 535.311

A. Background

To receive immunity from the U.S. antitrust laws, the Shipping Act of 1984 (Shipping Act or Act) requires that parties file a true copy of their agreement with the Commission, 46 U.S.C. 40302, and that agreement filings be subject to an initial review period of 45 days before they may become effective, 46 U.S.C. 40304(c). The regulations in § 535.311 provide an exemption from the 45-day waiting period for low market share agreements that do not contain certain types of authority, such as rate or capacity rationalization authority.[4] To qualify for this exemption, the combined market shares of the parties in any of the affected sub-trades must be less than 30 percent (if all of the parties are members of another agreement in the same trade or sub-trade with one of the excluded authorities (*e.g.,* rate or capacity rationalization)) or 35 percent (if at least one party is not a member of such an agreement in the same trade or sub-trade). The regulations in § 535.104(e) define capacity rationalization to mean a concerted reduction, stabilization, withholding, or limitation in any manner whatsoever by ocean common carriers on the size or number of vessels or available space offered collectively or individually to shippers in any trade or service.

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[1] The Commission's *Plan for the Retrospective Review of Existing Rules* (Nov. 4, 2011) and *Update to Plan for Retrospective Review of Existing Rules* (Feb. 13, 2013) are published on the FMC home page under About the FMC/Report, Strategies, and Budget.

[2] *Comments of Ocean Common Carriers to Retrospective Review of Existing Rules,* dated May 18, 2012, are published on the FMC home page under *www.fmc.gov/16-04.*

[3] The carriers are the members to the *ABC Discussion Agreement, Australia and New Zealand-United States Discussion Agreement, Caribbean Shipowners Association, Central American Discussion Agreement, Transpacific Stabilization Agreement, U.S./Australasia Discussion Agreement, Venezuelan Discussion Agreement,* and the *West Coast of South America Discussion Agreement.*

[4] These authorities are listed under § 535.502(b) as: (1) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (2) the discussion of, or agreement on, capacity rationalization; (3) the establishment of a joint service; (4) the pooling or division of cargo traffic, earnings, or revenues and/or losses; or (5) the discussion of, or agreement on, any service contract matter.

Agreements that contain capacity rationalization authority do not qualify for an exemption from the waiting period under § 535.311. Further, such agreements are assigned specific Information Form and Monitoring Report requirements. Although the definition could be interpreted quite broadly in the context of operational agreements, the Commission has, in practice, limited it to meaning agreements that fix the supply of capacity, such as vessel sharing and alliance agreements, and include exclusivity provisions[5] on the ability of the parties to operate outside of the agreement.

In its ANPR, the Commission considered clarifying the definition of capacity rationalization to mean the authority in an agreement by or among ocean common carriers to discuss, or agree on, the amount of vessel capacity supplied by the parties in any service or trade within the geographic scope of the agreement. The Commission explained that the proposed definition would apply to voluntary discussion agreements between carriers where the parties discuss and/or agree on the amount of vessel capacity supplied in a trade. On an operational level, the proposed definition would apply to all forms of vessel sharing agreements (VSAs) between carriers where the parties discuss and/or agree on the number, capacity, and/or allocation of vessels or vessel space to be shared in the operation of a service between the parties to the agreement. Further, to avoid confusion, the proposed definition would apply to all such identified capacity agreements regardless of whether they contain any form of exclusivity clauses. As such, this definition would exclude all VSAs from qualifying for a low market share exemption.

The Commission also introduced a new potential waiting period exemption in § 535.308 that would apply to agreements among ocean common carriers that contain non-exclusive authority to charter or exchange vessel space between two individual carriers and do not contain any authority identified in § 535.502(b) (*i.e.,* forms of rate, pooling, service contract or capacity rationalization authorities). The Commission explained that non-exclusive authority means that the agreement contains no provisions that place conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services. The Commission explained that a waiting period exemption was better suited for such space charter agreements because there is more of an operational urgency for them to become effective upon filing.

The Commission further considered simplifying the application of the low market share exemption in § 535.311 by eliminating the lower market share threshold of 30 percent in cases where the parties to the agreement are members of another agreement in the same trade or sub-trade containing any of the authorities identified in § 535.502(b) (*i.e.,* forms of rate, pooling, service contract or capacity rationalization authorities). As such, the market share threshold would be set at 35 percent or less regardless of whether the parties to the agreement participate in any other agreements in the same trade or sub-trade. The Commission explained that the application of the tiered 30 and 35 percent threshold (based on the parties' participation in other agreements by sub-trade) is unnecessarily complicated and time consuming for the industry to analyze. Further, with the proposed modification to the definition of capacity rationalization, only simple operational agreements would be eligible for the exemption, such as space charter and sailing agreements, that would not otherwise be automatically exempted under the proposed space charter exemption in § 535.308. Accordingly, the Commission stated that limiting the low market share exemption to such simple operational agreements would reduce the competitive concerns about the parties' participation in other agreements in the same trade or sub-trade and eliminate the need for the lower 30 percent market share threshold.

B. Summary of Comments

The carriers were the only interested parties that submitted comments on these proposals. On the definition of capacity rationalization, the carriers favor retaining the present definition in § 535.104(e), which they argue was intended to include: *(i) An agreement that prohibits or restricts the introduction of vessels into the agreement trade in a service other than that operated under the agreement; (ii) an agreement that prohibits or restricts the use of space on non-agreement vessels in the agreement trade by an agreement party (e.g., chartering space from a non-agreement carrier); and (iii) an agreement that results in an artificial withholding of vessel capacity (i.e., a "roping off" of a portion of vessel capacity).* Carriers at 4. The carriers recommend that if the Commission wants to clarify the definition, it should be revised to reflect this intended meaning and proposes the following definition:

> *Capacity rationalization* means any agreement between or among two or more ocean common carriers that: (i) Restricts or limits the ability of any or all those carriers to provide transportation in one or more trades covered by the agreement on vessels other than those utilized under that agreement; (ii) restricts or limits the ability of any or all of those carriers to provide services that are alternate to or in competition with the services provided under that agreement; or (iii) which results in the withholding of vessel capacity on vessels being operated in the trade covered by that agreement. The term does not include adjustments to capacity made by adding or removing vessels or strings of vessels pursuant to and within the existing authority of a filed and effective agreement.

Carriers at 12.

The carriers further argue that the Commission's proposed definition and its application under the low market share exemption would potentially subject many more agreements to the 45-day waiting period and quarterly monitoring reports, regardless of their impact or market share. Further, time sensitive modifications of such agreements would also be subjected to the waiting period. While they acknowledge that the regulations in § 535.605 allow for expedited review of agreements on request, the carriers claim that Commission staff is burdened by such requests and a fee is being proposed for each such request in another Commission rulemaking. They further explain that the filing fee for non-exempt agreements is much higher than the fee for exempt agreements, and the Commission is proposing to raise the fees. Carriers at 7.

The carriers believe that the Commission's proposed definition of capacity rationalization assumes that any agreement where the parties agree on vessels results in a reduction in capacity, which they state is untrue and provide examples of such. They argue that even if an agreement reduces capacity, it is not a concern in trades suffering from excess capacity, and where agreements do not contain exclusivity provisions, the parties are free to pursue their own commercial objectives. Carriers at 8–9.

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[5] Exclusivity provisions place conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services within the geographic scope of the agreement. In effect, they are non-compete clauses.

The carriers find the Commission's proposed definition to be unclear and overly broad and are concerned that it may be interpreted to include unintended forms of agreements. They explain that simple space charter agreements may allocate vessel space and/or set forth the number and size of vessels to be provided by the carrier selling the space. Further, they contend that subjecting more agreements to the 45-day waiting period reduces the carriers' operational flexibility and responsiveness to demand and imposes a serious administrative burden on carriers and Commission staff by requiring more agreements to file Information Forms and Monitoring Reports. Carriers at 9–10.

On the proposed exemption for space charter agreements in § 535.308, the carriers are supportive of the exemption but believe that the Commission's proposed definition for capacity rationalization creates uncertainty in distinguishing which agreements would qualify for the exemption. The carriers also see no reason why the exemption is limited to two party agreements and believe that space charter agreements involving more than two parties should be exempted as well. Carriers at 12.

On the proposed single 35 percent threshold for the low market share exemption in § 535.311, the carriers support the proposed modification but continue to argue that the market share should be based on the agreement-wide trade, rather than sub-trade. Carriers at 13.

C. Discussion

The Commission is unpersuaded by the carriers' arguments and does not believe that its proposed modifications to these sections, as set forth in the ANPR, should be altered. The requirements of the Shipping Act are clear. Agreements by or between ocean common carriers and/or marine terminal operators (MTOs) on matters set forth in 46 U.S.C. 40301 must be filed with the Commission to receive immunity from the U.S. antitrust laws and are subject to an initial review period of 45 days before they may become effective, except for assessment agreements.[6] The Commission may at its discretion exempt by order or rule any class of agreements or activities of parties to agreements, if it finds that the exemption will not result in a substantial reduction in competition or be detrimental to commerce. Further, the Commission may attach conditions to an exemption and may, by order, revoke an exemption. 46 U.S.C. 40103.

The ANPR explained in detail the basis for the present low market share exemption and the definition of capacity rationalization, as well as the need to modify these regulations. At present, almost any form of agreement involving capacity could fall within the current definition of capacity rationalization. Even agreements that simply coordinate sailing schedules among the parties can impose a concerted limitation on capacity as described under the present definition. The ambiguity of the definition has created uncertainty over which types of agreements would qualify for a low market share exemption under § 535.311. As discussed above, the Commission has, in practice, limited the definition to mean agreements that fix the supply of capacity, such as vessel sharing and alliance agreements, and include exclusivity provisions on the ability of the parties to operate outside of the agreement. Operational agreements between carriers to fix capacity with exclusivity provisions are viewed as one of the most potentially anticompetitive forms of capacity rationalization.

Technically, however, the Commission views an agreement on the amount of vessel capacity supplied in a service or trade as the rationalization of capacity between carriers, and is proposing to clarify the definition of capacity rationalization to reflect this view. Under the application of U.S. antitrust law, agreements between competitors to fix supply in a market are viewed as potentially harmful and anticompetitive, and, like agreements between competitors to fix prices, are *per se* illegal, regardless of and without any examination of their purported purposes, harms, benefits, or effects.[7] *Per se* illegal agreements are not acceptable activities that are permitted within a "safety zone" for collaboration between competitors under the FTC/DOJ guidelines.[8] In part, it was this principle of a "safety zone" of competitor collaboration that was used as a basis for the low market share exemption.[9]

At the time of the previous rulemaking in 2004, many of the vessel sharing and alliance agreements contained exclusivity clauses and even rate authority. Since that time, agreements that manage capacity have changed and continue to evolve, which supports the need for the Commission's review and update of its present regulations. Carriers are expanding their cooperation of services through larger alliances and using service centers to manage capacity. Such agreements authorize the parties to exchange vessel space and agree on capacity to form and operate collective services and VSAs in the global liner trades. The Commission tentatively affirms that agreements with such authority clearly rationalize capacity, and therefore should not be exempted from the waiting period under § 535.311, regardless of whether exclusivity provisions are imposed on the parties.

The Commission emphasizes that the proposed definition of capacity rationalization does not mean that every agreement that contains such authority necessarily presents competitive concerns. The Commission acknowledges that VSAs and alliances can promote economic efficiencies and cost savings in the offering of services to shippers. Depending on market conditions, however, agreements with such a direct impact on capacity, especially in trades where their parties may discuss and agree on rates, can potentially be used to reduce competition and unreasonably affect transportation services and costs within the meaning of section 6(g) of the Act (46 U.S.C. 41307(b)), which justifies a thorough initial review of their competitive impact under the 45-day waiting period.

In their comments, the carriers propose an alternative definition of capacity rationalization that would appear to limit it to agreements that impose exclusivity provisions, or artificially withhold, *i.e.,* "rope off," vessel capacity, as contemplated in the old definition of "capacity management," which the Commission replaced with the definition of "capacity rationalization" in the 2004 Final Rule.[10] The carriers' definition is identical in meaning to their alternative definition proposed in the Commission's previous rulemaking in

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[6] An assessment agreement is an agreement, whether part of a collective bargaining agreement or negotiated separately, that provides for collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized. 46 U.S.C. 40102. Assessment agreements must be filed with the Commission and are effective upon filing. 46 U.S.C. 40305(a)

[7] *Antitrust Guidelines for Collaborations Among Competitors,* issued by the Federal Trade Commission and the U.S. Department of Justice (FTC/DOJ), April 2000, p. 3.

[8] *Ibid,* p. 26.

[9] 69 FR 64398, 64399–64400 (Nov. 4, 2004).

[10] Previously, the definition in § 535.104(e) was limited to capacity management, which was defined as an agreement between two or more ocean common carriers that authorized withholding some part of the capacity of the parties' vessels from a specified transportation market, without reducing the real capacity of those vessels.

2004.[11] In that rulemaking, the Commission rejected the carriers' proposed definition and reasoned that:

> We decline to adopt the definition suggested by OCCA, as it would omit some conference and discussion agreements that contain authority for members to discuss and agree upon rationalization of capacity by members in specific trades. In addition, the Commission continues to be of the view expressed in the NPR that the potential effects of such arrangements are heavily dependent on conditions particular to an agreement trade and how the agreement is related to other agreements.[12]

For these same reasons, tentatively, the Commission finds the carriers' proposed definition in this rulemaking to be deficient and again declines to adopt it. The carriers' proposed definition seems to reflect past trends in carrier agreements as opposed to current trends, and part of the purpose of this rulemaking is to update and correct part 535 to reflect current carrier agreements. As explained above, while limiting the application of capacity rationalization to operational agreements with exclusivity provisions may have been appropriate in the past, carrier agreements have evolved since 2004 and are continuing to evolve. The Commission's proposed definition seeks to clarify the meaning of capacity rationalization as the authority to discuss, or agree on, the amount of vessel capacity supplied in a service or trade, which includes VSAs and alliances as well as voluntary discussion agreements with such authority. The Commission believes its proposed definition accurately captures the practice of capacity rationalization and narrows the scope and application of the present definition in a way that is preferable to the current practice of informally applying additional limitations that are not explicitly included in the current definition, such as the presence or absence of exclusivity provisions.

Likewise, the practice of implementing capacity management programs to "rope off" vessel space in a trade has become obsolete, and the inclusion of such practices in the definition would have no application in the present day. In place of such programs, carriers have increased their cooperation in VSAs and alliances, and utilize service centers to manage and maintain set capacity levels among the parties. Further, under the carriers' proposed definition, to state that *the term does not include adjustments to capacity made by adding or removing vessels or strings of vessels pursuant to and within the existing authority of a filed and effective agreement* would likely exclude almost every VSA and alliance agreement, regardless of whether it contains exclusivity provisions.

The carriers assert that the Commission's proposed definition assumes that any agreement where the parties agree on vessels results in a reduction in capacity. The Commission does not make any such assumption; however, the Commission must analyze agreement filings during the initial review period to determine their competitive impact in the trades where the parties operate. The Commission's proposed definition would provide for this initial review of VSAs and alliances before they take effect under the Shipping Act.

The carriers further assert that the Commission's proposed definition could include unintended forms of agreements, such as simple space charter agreements that allocate vessel space or specify the number and size of vessels. On the contrary, the Commission believes that its proposed definition would more clearly and narrowly define the meaning of capacity rationalization to correct the overly broad ambiguity of the present definition, which could be interpreted to include almost any form of agreement involving vessel capacity. It is the interpretation of the Commission that space charter agreements can be distinguished from VSAs in that the parties to space charter agreements traditionally are not authorized to discuss or agree on the amount of vessel capacity to be deployed in a service or trade, which would place a concerted limit or restriction on the supply of vessel capacity made available by the parties. Referencing the number or size of vessels in a space charter agreement is not the same as providing the authority for the parties to discuss and agree on the amount of vessel capacity in a service or trade. The Commission believes that this distinction is made clear in § 535.104(gg) by the definition that:

> *Space charter agreement* means an agreement between ocean common carriers whereby a carrier (or carriers) agrees to provide vessel space for use by another carrier (or carriers) in exchange for compensation or services. The arrangement may include equipment interchange and receipt/delivery of cargo, but may not include capacity rationalization as defined in this subpart.

A VSA, on the other hand, generally authorizes space chartering but also involves two or more carriers contributing and sharing vessels and vessel space to form and collectively operate a liner service, and such authority to discuss and agree on the amount of vessel capacity the parties plan to make available in their service is explicitly stated in the agreement.

The carriers complain that the Commission's proposal would subject more agreements and modifications to agreements to the 45-day waiting period, reporting, and higher filing fees. The carriers fail to consider the corresponding reduction in filings associated with the Commission's proposed exemption for space charter agreements in § 535.308. As noted in the ANPR, in terms of the overall impact of its proposed modifications to agreement filings, the Commission estimated that the filing burden could actually be reduced.[13] In addition, the carriers requested and the Commission is proposing in this rulemaking that agreement modifications to reflect changes in the number or size of vessels within the range specified in an agreement (which would include VSAs and alliances) should be exempt from the waiting period as non-substantive modifications in § 535.302. In terms of reporting, the proposed Information Form and Monitoring Report[14] would simply require parties to VSAs and alliances to file certain service and vessel capacity data, which any party to such agreements readily tracks and has available. The most reliable sources of information on an agreement are the parties to the agreement.[15] In cases where agreement parties believe reporting is unnecessary or too onerous, the parties may apply for a waiver in accordance with the regulations in § 535.705.

On the proposed space charter exemption in § 535.308, the carriers believe that agreements involving more than two parties should be exempted as well. The Commission points out that space charter agreements involving more than two parties may qualify for a low market share exemption in § 535.311, where the market share of the parties in any of the agreement's sub-trades is equal to or less than 35 percent and the agreement does not contain forms of rate or capacity rationalization authority, as proposed. Cases where a space charter agreement would not qualify under either waiting period exemption are generally rare, and the Commission believes that such agreements would require a full review under the 45-day waiting period. For instance, such cases have occurred in the past when a carrier decides to remove all of its vessels from a trade and enter into a space charter agreement with an alliance or a large VSA, which exceeded the threshold for the low market share exemption. In these cases, the Commission would need to examine the probable competitive impact of the removal of vessel space from the trade and the resulting market supply and demand levels, under a full 45-day review.

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[11] 69 FR at 64401.

[12] *Ibid.*

[13] Based on new and amended agreement filings for fiscal year 2014, the Commission estimates that 15 filings that were effective on filing under the low market share exemption would be subject to the 45-day waiting period as a result of the proposed revisions to the definition of capacity rationalization. Conversely, 20 filings that were subject to the 45-day waiting period would be effective on filing as new two-party space charter agreements or amendments thereof under the new proposed exemption. In fiscal year 2014, there were a total of 186 agreement filings, including new and amended agreements. 81 FR at 10192.

[14] The Monitoring Report would only require reporting from agreements authorizing capacity rationalization that involve three or more carrier parties.

[15] 2003 NPR, 68 FR 67510, 67522 (Dec. 2, 2003).

The carriers continue to argue that the market share threshold for the low market share exemption in § 535.311 should be based on the agreement-wide trade, rather than sub-trade. The ANPR addressed this matter at length.[16] The Commission does not believe that the exemption should be modified in this manner because it could result in agreements taking effect upon filing without an initial review where the parties hold a competitively significant share of the market in the smaller sub-trades. Further, using an agreement-wide threshold may encourage parties to structure their agreements as broadly as possible to evade the waiting period by setting their scopes at a regional, continental, or worldwide level rather than by the applicable trade lane.

Based on the foregoing, the Commission is proposing the modifications to § 535.104(e), § 535.308, § 535.311 as described in the ANPR without any changes. The Commission requests additional comments on these proposals.

III. Marine Terminal Services Agreements in § 535.309

A. Background

Section 535.309 provides an exemption from the filing and waiting period requirements of the Act for terminal services agreements[17] between MTOs and ocean carriers to the extent that the rates, charges, rules, and regulations of such agreements were not collectively agreed upon under a MTO conference agreement.[18] Parties may optionally file their terminal services agreements with the Commission. 46 CFR 535.301(b). If the parties decide not to file the agreement, however, no antitrust immunity is conferred with regard to terminal services provided under the agreement. 46 CFR 535.309(b)(2). Parties to any agreement exempted from filing by the Commission under Section 16 of the Act, 46 U.S.C. 40103, are required to retain the agreement and make it available to Commission staff upon request during the term of the agreement and for a period of three years after its termination. 46 CFR 535.301(d).

In the ANPR, the Commission indicated that it was reconsidering this exemption with the view toward requiring certain terminal services agreement information to be submitted to the FMC because of the increased cooperation of MTOs in conference and discussion agreements. Within the past decade, MTOs at major U.S. ports have become more active in cooperating through agreements to implement new programs addressing security and safety measures, environmental standards, and port operations and congestion. While such programs may potentially be beneficial, agreements between MTOs can also affect competition in the terminal services market and reduce transportation services and costs within the meaning of section 6(g), such as agreements on the levels of free-time, detention, and demurrage charged by MTOs to port users. Under the exemption, as MTOs have increased their cooperation under agreements, no empirical data on the terminal services market has been readily available to the Commission to analyze the competitive impact of such cooperative programs and activities. The filing of terminal services agreements would provide the Commission with timely market data to analyze and monitor the competitive impact of programs and activities of MTOs in agreements.

In the ANPR, the Commission considered a standard Monitoring Report requirement to provide that all of the MTOs participating in any conference or discussion agreement on file and in effect with the FMC, submit to the FMC all of their effective terminal services agreements and amendments thereto. The Commission invited public comments on this proposed Monitoring Report requirement for MTOs, along with estimates of the probable reporting burden. In addition, recommendations from commenters were solicited on alternative Monitoring Report requirements for MTOs. Further, the Commission considered modifying § 535.301 to establish a procedure by which staff would send a written request for exempted agreements and the parties would have 15 days to respond.

B. Summary of Comments

Comments on these proposals were submitted by the carriers, NAWE, PMSA, Port of NY/NJ, WCMTOA/OAKMTOA, and SCPA. None of the interested parties that submitted comments favor a Monitoring Report requirement for MTO parties to conference and discussion agreements to submit their terminal services agreements to the FMC. All of the commenters presented similar arguments opposing the proposed requirement.

Commenters argue that the submission of terminal services agreements would be unduly burdensome from an administrative and cost perspective to both the industry and Commission. They explain that terminal services agreements are frequently amended on such matters as operating conditions, equipment variations, labor issues, environmental laws, port requirements, inland transport issues and numerous other factors. They claim that the burden would be too onerous if amendments had to be filed with the FMC every time adjustments are made to their terminal services agreements. NAWE also notes that under the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94, 129 Stat. 1312 (Dec. 4, 2015), substantial reporting requirements on port performance statistics will likely be imposed on MTOs, and it cautions against imposing simultaneous overlapping regulatory burdens. NAWE at 5.

SCPA stresses that unlike most port authorities, as a marine terminal operating port, it must meet the same regulatory requirements as private MTOs. SCPA at 4. As such, SCPA finds the proposed requirement to be unnecessarily broad, and believes that a more narrowly defined rule could address the Commission's concerns without unduly burdening operating ports. SCPA at 6.

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[16] 81 FR at 10191.

[17] Section 535.309(a) defines marine terminal services agreement to mean an agreement, contract, understanding, arrangement, or association, written or oral, (including any modification or appendix) between a marine terminal operator and an ocean common carrier that applies to marine terminal services that are provided to and paid for by an ocean common carrier. These services include: Checking, docking, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage and including any marine terminal facilities that may be provided incidentally to such marine terminal services.

[18] Section 535.309(b)(1) defines a marine terminal conference agreement as an agreement between or among two or more marine terminal operators and/or ocean common carriers for the conduct or facilitation of marine terminal operations that provides for the fixing of and adherence to uniform maritime terminal rates, charges, practices and conditions of service relating to the receipt, handling, and/or delivery of passengers or cargo for all members.

Commenters argue that the filing of their terminal services agreements would have little or no regulatory value in analyzing the impact of MTO conference and discussion agreements or understanding the terminal services market. They explain that for the most part, terminal services agreements are negotiated on an individual and confidential basis between the MTO and the carrier, and MTOs actively compete against each other for carrier business. They reason that terminal services agreements containing any matters collectively agreed upon under an MTO conference or discussion agreement are already required to be filed with the FMC pursuant to § 535.309(b)(1),[19] and as such, the FMC is being provided with the necessary information to monitor the impact of the MTO conference or discussion agreement. Both PMSA and NAWE noted that because there are only a few terminal services agreements on file with the FMC, this is evidence that MTO agreements have no real impact on the terms of individually negotiated terminal services agreements. PMSA at 1–2 and NAWE at 3.

Commenters further reason that MTO conferences and discussion agreements are required to file minutes of their meetings under the regulations and some agreements provide monitoring data. Thus, they contend that the Commission already receives a sufficient amount of information to monitor MTO agreements. Also, instead of a blanket Monitoring Report requirement, when the Commission may need specific information, the Commission has the authority to request terminal services agreements through a more focused inquiry on an *ad hoc* basis. The carriers support the proposed modifications to § 535.301 for a deadline to a written request, noting that such procedures provide greater certainty of receiving the requested agreements in a timely manner. Carriers at 15.

In terms of the terminal services market, commenters argue that conclusions cannot be drawn from comparing terminal services agreements. They explain that the characteristics of marine terminals are unique from each other in their physical configurations, efficiency levels, operating procedures, and customer needs. Terminals have different berthing capabilities, equipment, customers with different vessels and cargo volumes, and attempting to understand the market by comparing terminal services agreements is not valid without accounting for the unique features of each marine terminal. Commenters contend that even if comparisons of terminal services agreements provided some conclusion about the market, it would shed no light on the activities of MTO conference or discussion agreements.

Commenters believe that the proposed requirement could also discourage MTOs from joining and participating in agreements that develop and implement beneficial programs addressing such critical matters as air emissions, security, and port operations and congestion, and as such, the Commission would be acting in a manner that hinders such beneficial programs. SCPA added that new groupings of carrier alliances are placing novel demands on ports and MTOs, and the proposed requirement would stifle, rather than encourage innovation. SCPA at 6.

Further, Commenters stress that terminal services agreements contain extremely sensitive and competitively significant information on not only rates, but duration, throughput and other items. They caution that if such information were disclosed (whether through subpoena, FOIA request, Congressional inquiry or otherwise), the parties to the agreement could suffer serious commercial harm. In this regard, the carriers request that if the Commission proceeds with the proposed requirement, regulations be added specifically protecting terminal services agreements from disclosure under 46 U.S.C. 40306. Carriers at 16.

The carriers conclude by recommending that the Commission discontinue its proposed Monitoring Report requirement for MTOs in favor of its proposed modifications to § 535.301. However, if the Commission chooses to proceed with the proposed requirement, the carriers request that § 535.309(b)(2) be revised to provide that the parties to the terminal services agreements be granted antitrust immunity, as the agreements would be in the possession of the Commission. Carriers at 16.

C. Discussion

The Commission disagrees with the idea that terminal services agreements have no value in analyzing the impact of MTO conference and discussion agreements or understanding the terminal services market. A terminal services agreement between an MTO and a carrier is an agreement that by statute is required to be filed with the FMC and subject to the 45-day review period,[20] but was exempted from the filing requirements by the Commission in a final rule in 1992.[21] The Commission may amend its exemption, or revoke it entirely, if the Commission finds that the circumstances that merited the exemption have materially changed.

Terminal services agreements directly reveal the extent to which rates, terms, and programs agreed upon by MTOs in conference and discussion agreements have been implemented in the market. A review of terminal services agreements can provide a basis for the Commission to gauge the competitive impact and costs of actions by MTOs in conference and discussion agreements, and the extent to which any Commission action may be necessary. Further, terminal services agreements show the extent to which MTOs are competing on pricing and other terms, which provides the Commission with an understanding of the competitive structure of the terminal services market at a port and between ports. A uniformity of pricing and terms between MTOs at a port or ports would indicate a lack of competition in the terminal services market that may be attributable to the actions of MTOs in conference and discussion agreements.

In its review of a sampling of terminal services agreements in connection with the *Pacific Ports Operational Improvements Agreement* (PPOIA), FMC No. 201227,[22] the Commission gleaned useful information on the rates and competitive structure of the terminal services market at U.S. Pacific ports, which it would not otherwise have been able to discern without requesting and reviewing the terminal services agreements of the PPOIA parties. In its regulatory oversight of carrier and MTO agreements, the Commission strives to obtain and utilize the most accurate information to monitor the competitive impact of agreements, particularly where there are complaints against the agreement, as in the case of PPOIA.

As such, the Commission finds the commenters' arguments dismissing the relevance of terminal services agreements to be unpersuasive. While affected by various cost factors, container terminal operations at a port, or between ports, are not so different that the rates and terms of the terminal services offered by MTOs cannot be directly compared. While the exemption in § 535.309 does not apply to rates, charges, rules, and regulations of an MTO conference, it does not exclude from the exemption rates, charges, rules and programs established under a MTO discussion agreement, which is voluntary on the parties. It is this increased activity of MTOs under discussion agreements, such as the PierPASS program under WCMTOA, that has caused the most concern among consumers and affected third parties and which the Commission has endeavored to monitor more closely. Minutes of agreement meetings reveal the decisions made under an MTO conference or discussion agreement; however, market data is needed to determine the competitive impact of the agreement decisions, and few MTO agreements are required to provide consistent market data.

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[19] At present, there are 19 terminal services agreements on file at the FMC.

[20] 46 U.S.C. 40301–40304.

[21] 57 FR 4578 (Feb. 6, 1992).

[22] By Order on July 10, 2015, the Commission requested certain terminal service agreements from carrier parties to PPOIA.

On concerns of filing burden and confidentiality, the Commission does not believe that a Monitoring Report requirement to submit terminal services agreements and their amendments would be too onerous a burden on MTOs. The filing would require little, if any, preparation. A copy of the agreement and its amendments could be electronically and securely filed with the FMC in the same manner that service contracts and their amendments are filed, which in fiscal year 2015 exceeded 700,000 filings.

As a Monitoring Report requirement, the submission of terminal services agreements could be protected from public disclosure under 46 U.S.C. 40306 and the regulations in § 535.701(i), which protects information provided by parties to a filed agreement from being disclosed in response to a Freedom of Information Act (FOIA) request.

On the other hand, the Commission tentatively agrees with the commenters that, at the present time, imposing a standard Monitoring Report requirement on all of the MTO conference and discussion agreements may be unnecessarily broad. The Commission believes that the most imminent need for terminal services agreement information pertains to particular MTO discussion agreements whose actions are more likely to affect competition in the terminal services market. The Commission tentatively concludes that it can acquire such agreements under its present authority in § 535.301. If the Commission is going to use such authority, however, the Commission believes that § 535.301(d) should be strengthened by adding a provision requiring exempted agreements to be submitted to the FMC within 15 days of a written request from the Director, Bureau of Trade Analysis. If conditions change, the Commission could revisit the proposal to institute standard Monitoring Report requirements for all MTO conference and discussion agreements, or possibly amend, or revoke, the exemption in § 535.309. The Commission requests comment on this proposal.

IV. Complete and Definite Agreements in § 535.402, and Activities That May Be Conducted Without Further Filings in § 535.408.

The Shipping Act requires that a "true copy" of every agreement be filed with the Commission.[23] In administering these requirements, the Commission has endeavored to provide parties to agreements with guidance and clarity on what constitutes a "true copy" of an agreement through its regulations in § 535.402, which require that an agreement filed under the Act must be clear and definite in its terms, must embody the complete, present understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their operations and regulate the relationships among the agreement members.

Section 535.408 exempts from the filing requirements certain types of agreements arising from the authority of an existing, effective agreement.[24] Specifically, agreements based on the authority of effective agreements are permitted without further filing to the extent that: (1) the effective agreement itself is exempted from filing, pursuant to subpart C of part 535, or (2) it relates to one of several technical or operational matters stemming from the effective agreement's express enabling authority. Such matters include stevedoring, terminal, and related services.[25]

A. § 535.402

In the ANPR, the Commission stated that it was concerned about confusion among regulated entities regarding the requirement that further agreements arising from the authority of a filed agreement must generally be filed with the Commission.[26] In order to address this issue, the Commission indicated that it was considering proposing to amend § 535.402 to expressly state that an agreement that arises from the authority of an effective agreement, but whose terms are not fully set forth in the effective agreement to the extent required by the current text of § 535.402, must be filed with the Commission unless exempted under § 535.408.

Only the carriers commented on this potential proposal, stating that although they do not believe that revision to the regulation was necessary, they have no objection to the proposal under consideration.[27] Accordingly, the Commission is proposing to add a second paragraph to § 535.402 as contemplated in the ANPR.

B. § 535.408(b)(3)

The Commission also noted in the ANPR that it was concerned that the filing exemption in § 535.408(b)(3) for further agreements addressing stevedoring, terminal, and related services is unclear and overly broad. The Commission indicated that it was considering proposing to remove the exemption and replace it with a list of more narrowly defined, specific services and requested comment on what specific services might be appropriately included within the revised exemption and how to define those services. The Commission also requested comments on whether the specific examples of stevedoring, terminal, and related services listed in § 535.408(b)(3), *i.e.*, the operation of tonnage centers or other joint container marshaling facilities, continue to be relevant and suitable exempted activities.

The carriers and several of the groups consisting of MTOs or MTOs and carriers[28] (MTO groups) question the need for any changes to the exemption and assert that, given the few situations in which the scope of the provision had been discussed by agreement parties and Commission staff, the Commission was overstating concerns about the clarity and potential abuse of the provision.[29] Those groups also express concern that it would be extremely difficult to make a comprehensive list of all services to exempt from filing, and any list developed now could be obsolete in the future.[30] The groups argue that because any agreement related to service omitted from the list would have to be filed with the Commission and subject to the 45-day waiting period (regardless of how minimal the competitive impact or how great the benefit to the public), the proposal under consideration would increase the burdens on both agreement parties and Commission staff, and delay the operational or business requirements of the parties.[31]

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[23] 46 U.S.C. 40302(a).

[24] As discussed above, the Commission may, under 46 U.S.C. 40103, exempt classes of agreements and activities of regulated entities from the requirements of the Shipping Act if it finds that the exemption will not result in a substantial reduction in competition or be detrimental to commerce.

[25] 46 CFR 535.408(b)(3).

[26] 81 FR at 10194.

[27] Carriers at 16.

[28] OAKMTOA, WCMTOA, NAWE, PMSA, Port of NY/NJ.

[29] Carriers at 19; WCMTOA/OAKMTOA at 5–6; NAWE at 6; PMSA at 2–3; Port of NY/NJ at 8.

[30] Carriers at 18–19; WCMTOA/OAKMTOA at 6; NAWE at 6–7; PMSA at 3; Port of NY/NJ at 7–8

In order to avoid these alleged problems, the groups recommend that the Commission retain the existing exemption.[32] As an alternative, WCMTOA/OAKMTOA suggest that the Commission consider requiring that agreement parties provide the Commission with confidential notice of further agreements falling under the exemption, allowing the Commission to review those agreements without a "full-blown agreement amendment" process and enabling the Commission to better understand how the exemption is being used and whether further action on the issue is required in the future.[33]

In addition to the points described above, the carriers offer several additional comments not raised by the MTO groups. Specifically, the carriers state that the exemptions in § 535.408(b) represent a delicate and difficult exercise in balancing the Commission's need for information and oversight and one of the Shipping Act's stated purposes, to regulate with a minimum of government intervention and regulatory costs.[34] The carriers argue that the concerns voiced by the Commission in the ANPR are inapplicable to operational carrier agreements such as vessel and space charter agreements, which almost always create the need for carriers to come to an understanding about how to deal with terminals and stevedores and, therefore, generally include authority to discuss and agree on these issues.[35] The carriers argue that such arrangements are a routine part of such agreements and there is no need to change the existing exemption.[36]

In the alternative, the carriers recommend clarifying the current exemption rather than replacing it with a list of specific services.[37] With respect to tonnage centers, the carriers assert that the exemption should be retained because a tonnage center is merely an administrative mechanism through which agreement parties carry out existing authorities in the agreement; it neither adds nor detracts from such authority.[38]

With regard to joint container marshaling facilities, the carriers assert that the exemption should be retained and made part of a new provision exempting from further filing the implementation of authority to jointly procure facilities and services, providing three reasons supporting such an exemption.[39] First, the carriers argue that it is unlikely that joint procurement activities could result in an unreasonable increase in transportation cost or unreasonable reduction in transportation service. Rather, they assert that such activities will generally result in a reduction in costs to carriers and more efficient service, thereby lowering costs and improving service for shippers. Second, the carriers state that joint procurement activities do not represent further agreement among the carriers, but an agreement between the carriers and a third party entered into under the authority of a filed agreement. Finally, the carriers argue that joint procurement arrangements, by their nature, are ill-suited to further filing and appropriate for exemption. Specifically, the carriers assert that these are routine, everyday transactions that would be conducted by the individual carriers themselves if not done jointly. In addition, the carriers express concern and confusion over the mechanics of filing such arrangements and the danger that competitively sensitive information would be made public.

The Commission notes that the exemptions in § 535.408(b) were promulgated under the authority in 46 U.S.C. 40103 and were predicated on a finding that the exempted activities would not result in a substantial reduction in competition or be detrimental to commerce.[40] Against that backdrop, we first respond to the MTO groups' comments, which are based on the understanding that the exemption in § 535.408(b)(3) applies, and was intended to apply, to MTO agreements. Although, by its plain language, § 535.408(b)(3) does not limit the applicability of the exemptions to any particular type of agreement, the rulemaking history of the provision and the Commission's subsequent statements indicate that the Commission's focus was on activities under ocean common carrier agreements, rather than MTO agreements, when it promulgated § 535.408(b).

First, all of the exemptions in § 535.408(b) concern matters that can arise during the implementation of ocean common carrier agreements, and some of these are clearly limited to such agreements (*e.g.*, establishing and jointly publishing tariff rates, rules, and regulations; matters relating to space allocation and slot sales). In addition, the Commission's discussion of the exemptions in the 2003 Proposed Rule and 2004 Final Rule focused solely on ocean common carrier agreements.[41] Finally, the scope of § 535.408(b) was clarified by the Commission in the preamble to the 2009 final rule eliminating the general exemption from the 45-day waiting period for marine terminal agreements.[42] Specifically, the Ports of Los Angeles and Long Beach expressed concern in their comments to that rulemaking that the exemptions in § 535.408 are specific to VOCCs and do not address marine terminal operators.[43] In response, the Commission stated the following:

> [T]he Commission acknowledges that the exemption under section 535.408 primarily addresses carrier agreements. Section 535.408 states that "technical or operational matters of an agreement's affairs established pursuant to express enabling authority in an agreement are considered part of the effective agreement" and thus exempts certain amendments having technical or operational effects from the Shipping Act's filing requirement. While not part of Docket No. 09–02, the Commission is open to reviewing this latter section to determine if additional flexibility can be provided for amendments addressing technical or operational matters of marine terminal operator agreements.[44]

The MTO groups thus misconstrue the proposal under consideration as the revocation or revision of an exemption that the Commission granted to activities under MTO agreements after determining that such an exemption would not result in a substantial reduction in competition or be detrimental to commerce. As demonstrated by the history described above, no such determination has ever been made by the Commission, and part of the purpose of this rulemaking is to clarify the scope of the exemption as originally intended while also providing interested persons with the opportunity to put forth routine technical and operational matters related to terminal, stevedoring, and related services under MTO agreements that would be appropriate for an exemption.

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[31] Carriers at 22–23; WCMTOA/OAKMTOA at 6; NAWE at 7; PMSA at 3; Port of NY/NJ at 7–8.

[32] WCMTOA/OAKMTOA at 6; NAWE at 7; PMSA at 3; Port of NY/NJ at 8.

[33] WCMTOA/OAKMTOA at 7.

[34] Carriers at 17.

[35] *Ibid.* at 18.

[36] *Ibid.* at 19.

[37] *Ibid.* at 20.

[38] *Ibid.*

[39] *Ibid.* at 20–23.

[40] 2003 Proposed Rule, 68 FR at 67518.

[41] 68 FR at 67517–67519; 69 FR at 64400–64401.

[42] Final Rule, Repeal of Marine Terminal Agreement Exemption, 74 FR 65034 (Dec. 9, 2009).

[43] *Ibid.* at 65034.

[44] *Ibid.* at 65035–67036.

The "few situations" in which this exemption has arisen in the context of MTO agreements are thus troubling. They demonstrate that: (1) Contrary to the Commission's original intent, the exemption in § 535.408(b)(3) is worded broadly enough potentially to apply to activities under MTO agreements; and (2) in the context of MTO agreements, the exemption is potentially broad enough to encompass activities that raise competitive concerns (*i.e.,* much more than routine operational or administrative activities).

Unlike other exemptions in § 535.408(b) that could be read as applying to MTO agreements, but have the same minimal impact on competition and commerce as they do in the ocean common carrier agreement context,[45] "stevedoring, terminal and related services" cover a much broader set of activities in the MTO agreement context. In ocean common carrier agreements, these activities generally involve the joint negotiation of services from MTOs and other waterfront entities, some of which, like terminal services agreements, are currently exempt from the filing requirements when they involve a single carrier.[46] In contrast, "stevedoring, terminal, and related services"[47] generally represent the primary subject matter of MTO agreements, and § 535.408(b)(3) could be interpreted broadly enough to exempt from further filing, most, if not all, further agreements authorized by a filed agreement, regardless of their competitive impact. The Commission is therefore unable at this time to find that applying such a broad exemption to MTO agreements would not result in a substantial reduction in competition or be detrimental to commerce. The Commission requests comment on this tentative determination and any information that would support the finding required by 46 U.S.C. 40103 with respect to applying the exemption, as written, to MTO agreements.

For similar reasons, the Commission is tentatively rejecting WCMTOA/OAKMTOA's suggestion that the Commission require further agreements falling under the exemption to be filed confidentially with the Commission rather than subject them to the normal filing requirements. Granting such an exemption would require the same affirmative finding under 46 U.S.C. 40103, and given the potential breadth of further agreements falling under the exemption, and the fact that the Commission would not have the 45-day review period, the benefit of third-party comments, or the opportunity to issue an RFAI if it had concerns with such agreements, the Commission is unable to make such a finding at this time.

Although the Commission has tentatively determined that the current exemption is not appropriate for MTO agreements, we acknowledge that there may be some further agreements dealing with stevedoring, terminal, or related services that have little to no competitive impact. Accordingly, the Commission requested comment in the ANPR on what specific services might be appropriately included within the revised exemption and how to define those services. Unfortunately, none of the MTO groups responded to this request. In the absence of any recommendations regarding specific MTO agreement activities to include within the revised exemption, the Commission is proposing to amend the language of § 535.408(b)(3) to expressly limit the exemption to ocean common carrier agreements as originally contemplated by the Commission (with some additional revisions discussed below).

The Commission is, however, renewing its request for comments on specific stevedoring, terminal, or related services that should be exempted from further filing if authorized by an MTO agreement.[48] As contemplated in the rulemaking establishing § 535.408(b), these should be routine operational and administrative matters that require day-to-day flexibility and have little to no competitive impact. In addition to describing these services, commenters should provide information sufficient to enable the Commission to determine that exempting them from the further filing requirements would not result in a substantial reduction in competition or be detrimental to commerce.

With respect to the ocean common carrier agreements, the carriers are generally correct in their assertion that the Commission's concerns with § 535.408(b)(3) relate primarily to MTO agreements rather than operational carrier agreements such as vessel and space charter agreements. As discussed above, stevedoring, terminal, and related services (including the operation of tonnage centers and other joint container marshalling facilities) are generally discrete, ancillary matters in these agreements and do not raise the same competitive concerns that they do in the MTO agreement context. Accordingly, the Commission is proposing to retain the exemption for joint contracting of stevedoring and terminal services by parties to an ocean common carrier agreement[49] and the express exemption for the operation of tonnage centers and other joint container marshaling facilities under those agreements. In addition, the Commission is proposing to tie the definition of terminal services to § 535.309 and to specify that the exemption only applies to those services that are provided to and paid for by the agreement parties.

The Commission is also proposing to remove the phrase "or related services" from the exemption. It is unclear what might comprise the universe of such related services (other than the operation of tonnage centers and joint container marshaling services), and it is therefore difficult for the Commission to find that exempting such activities would not result in a substantial reduction in competition or be detrimental to commerce. The Commission invites comment on these revisions and any additional, specific related services for which exemption would be appropriate.

For similar reasons, the Commission is tentatively rejecting the carriers' request to create a general joint procurement exemption for ocean common carrier agreements, to the extent that their proposal contemplates something beyond the joint procurement activities that would be exempted under the proposed language. Although agreements that involve joint purchasing can often reduce costs and create efficiencies, such agreements also have the potential for anticompetitive outcomes.[50] Without knowledge of what upstream markets might be affected by such joint procurement activities, the Commission would have limited ability to determine their competitive impact. Similar to the request noted above with respect to "related services," however, the Commission requests comment on specific, additional joint procurement activities that may be appropriate for exemption.

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[45] For example, scheduling agreement meetings. 46 CFR 535.408(b)(4)(i).

[46] 46 CFR 535.309.

[47] The Commission's regulations define terminal services checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage. 46 CFR 525.1(19); 535.309.

[48] The commenters' arguments regarding the difficulties of creating and maintaining a list of specific services are not compelling. Should the need arise to amend the list in the future, the Commission can initiate a new rulemaking on its own initiative or in response to a petition for rulemaking filed by an interested party. 46 CFR 502.51.

[49] This proposal is based, in part, on the Commission's tentative determination to retain the exemption for marine terminal services agreements in § 535.309. Should the Commission reconsider this determination, the proposal related to § 535.408(b)(3) may be affected.

[50] By unduly increasing the bargaining power of the parties, in certain circumstances, such agreements potentially could extract prices so low (and/or an over-provision of service) that the sustainability of long-term investment in the affected upstream market(s) is jeopardized.

V. The Information Form Requirements in Subpart E of Part 535

A. Proposed Changes

In conjunction with its proposed changes to the agreement definitions and exemptions, the Commission proposes the following changes to the corresponding Information Form requirements. As discussed in its ANPR, the Commission proposes to modify Section I of the Information Form to specify that space charter agreements exempted under the new proposed exemption in § 535.308 would not be subject to these requirements, and to revise or add the proposed modifications to the definitions of agreement authorities listed in Section I.

In Section II, the Commission proposes to eliminate the Information Form requirements for simple operational agreements. The Commission believes that the present requirements to list port calls and provide a narrative statement of operational changes for such agreements are unnecessary.

The Commission proposes that Section III be renumbered as Section II and modified to apply to agreements with authority to charter vessel space (unless exempted under § 535.308 or § 535.311), or with authority to discuss or agree on capacity rationalization. The Commission believes that parties to agreements with such authority should provide before and after data on their service strings, vessel deployments, port itinerary, annual capacity, and vessel space allocation for the services pertaining to the agreement. Further, it is proposed that parties to such agreements provide vessel capacity and utilization data for the services pertaining to the agreement for the preceding calendar quarter, as well as a narrative statement discussing any significant operational changes[51] to be implemented under the agreement and the impact of those changes.

The Commission proposes that Section IV be renumbered as Section III and that the requirements for rate agreements be reduced to data on market share by agreement-wide trade instead of sub-trade, average revenue, vessel capacity and utilization, and a narrative statement on any anticipated or planned significant operational changes and their impact. The Commission believes that market share data derived on the total geographic scope of the agreement, rather than by sub-trade, should be sufficient for its analysis and less burdensome on the parties. Further, the Commission favors eliminating the present requirement for data regarding the revenue and cargo volume of the top ten major moving commodities for reasons explained in the ANPR. In addition, the Commission proposes to eliminate the requirement for data on the number of port calls.

The Commission proposes that Section V be renumbered as Section IV with no changes to the present requirements for contact information and a signed certification of the Form. Further, it is proposed that the instructions to the Information Form be streamlined by removing many of the same definitions repeated throughout each section of the Form and stating them in paragraphs at the beginning of the Form, with the understanding that they apply to each section. The Commission believes that this proposed modification would improve the clarity and readability of the instructions.

B. Summary of Comments

Comments to these proposals were submitted by the carriers and the NCBFAA. The carriers favor the proposed modifications that reduce the reporting requirements. However, consistent with their objections to the proposed change in the definition of capacity rationalization authority, the carriers object to the increase in the reporting requirements for VSA and alliance agreements and urge the Commission to reduce the requirements. Further, the carriers question why parties to rate agreements must continue to provide market share data on their Information Form when it has been eliminated elsewhere, and the Commission can use its own commercial sources of data to determine the market share of the agreement. They request that the requirement for market share be eliminated from the Information Form. Carriers at 23–24.

The NCBFAA supports the increased reporting for VSA and alliance agreements and encourages the Commission to seek a greater amount of detailed information on the potential costs and service impact of such agreements. They explain that VSA and alliance agreements encourage carriers to deploy increasingly larger vessels through the benefit of sharing the economic risk of such new purchases. They believe that the inadequate infrastructure at U.S. ports in combination with the deployment of these larger vessels has resulted in severe port congestion, extended delays in the delivery of cargo, and added costs to shippers. NCBFAA at 2–3.

The NCBFAA identified the congestion problems at the Ports of Los Angeles, Long Beach, and New York/New Jersey as particularly severe in the recent past, noting that delays in cargo delivery resulted in significant demurrage and detention charges to shippers. The NCBFAA believes that the deployment of larger vessels through VSAs has exacerbated the problems of port congestion, the inability of the current infrastructure to handle the flow of containers, and the increased costs for participants in the supply chain. They complain that while the use of larger vessels causes more congestion and delays, carriers do not vary free time for vessel size, and merchant haulers grapple to find sufficient trucking to dray double and triple the container volume in the allotted free time. NCBFAA at 3.

The NCBFAA further questions the purported cost savings associated with using larger vessels, stating that the costs associated with the congestion and infrastructure problems outweigh any savings of such vessels. They explain that the use of larger containerships results in increased equipment costs for MTOs; dredging costs for port authorities; infrastructure improvement costs for governments; and congestion costs for transportation companies, including trucking, barge and rail companies as well as ocean transportation intermediaries. In support of its argument, the NCBFAA cites a report on the impact of large containerships prepared by the Organization for Economic Cooperation and Development (OECD).[52] In its report, the OECD determined that cost savings are decreasing as containerships become bigger, and this tendency of decreasing cost savings continues with the introduction of the newest generation of containerships, which it estimates at four to six times smaller than the savings associated with the preceding round of vessel deployments.[53] NCBFAA at 4–5.

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[51] The Commission believes that the definition of significant operational changes should be standardized and applied consistently throughout the regulations to mean an increase or decrease in a party's liner service, ports of call, frequency of vessel calls at ports, and/or amount of vessel capacity deployment for a fixed, seasonally planned, or indefinite period of time. The amended definition would exclude incidental or temporary alterations or changes that have little or no operational impact.

[52] OECD/ITF, *The Impact of Mega-Ships*, International Transport Forum (2015), available at *http://www.itf-oecd.org/sites/default/files/docs/15cspa_mega-ships.pdf*.

[53] *Ibid*, p. 26.

The NCBFAA advises the Commission to examine whether the carriers' move toward increasingly larger vessels and alliance arrangements would result in an inappropriate transfer of risks and costs to the shipping public. As such, they recommend that the narrative statement of the Information Form requirements for parties to VSAs be expanded to include: (1) Carriers' plans for addressing delays in the loading and discharging of containers on and off vessels at ports; (2) sufficient chassis availability to handle the movement of containers at ports; (3) sufficient drayage availability to handle the movement of containers at ports; (4) carriers' plans for eliminating duplicative container handling operations at ports; (5) projected dwell times; (6) allotted free time for container movements based on vessel size and drayage availability; and (7) unfounded demurrage or detention costs due to delays that are beyond the control of shippers. NCBFAA at 6–7. Further, the NCBFAA recommends that parties to VSA and alliance agreements be required to provide the Commission with their contingency plans for handling cargo when their vessels cannot access ports as scheduled due to congestion. NCBFAA at 8.

C. Discussion

The carriers request that the proposed Information Form requirements for VSAs be reduced but they do not provide any specifics or alternative recommendations. The proposed service and capacity reporting requirements for VSA and alliance agreements should provide the Commission with a clearer understanding of any service changes and the impact of those changes in its initial review of the agreement, without having to request additional information. The Commission believes that such service data is prepared and readily available because parties to VSAs would likely examine such data to conduct their own analysis when entering into such agreements. The parties are the source of the most accurate firsthand information. Therefore, such data should not be an unreasonable burden to report, and the Commission is disinclined to reduce these Information Form requirements.

Regarding the market share requirement for rate agreements, while the Commission can and does conduct its own market analysis, it is important at the initial filing stage of the agreement that the parties present to the Commission their analysis and understanding of the market and the market share of the agreement. The interpretation of the market might vary depending on the authority and geographic scope of the agreement, and the parties' view of the market might differ from the Commission's view. In addition, the Commission is proposing to require only agreement-wide market share and eliminate the requirement of market share by sub-trade, which would significantly reduce the reporting burden on the industry.

The Commission appreciates all of the concerns expressed in the comments of the NCBFAA regarding the competitive impact of VSA and alliance agreements. The Commission believes that the NCBFAA raises valid concerns on how the size of vessels deployed under these arrangements can impact port and terminal operations and the cost of handling containers within the meaning of unreasonable service decreases and unreasonable cost increases under section 6(g). The Commission will take these concerns into consideration in its review of such agreements. However, as a matter of standard reporting, the Commission does not believe that such an extensive line of inquiry is necessary for reviewing every VSA. The Commission believes that information on terminal and cargo handling matters would be more meaningful in the review of major alliance agreements, and the Commission has formally requested information on such matters in its past review of alliance agreements pursuant to its authority under 46 U.S.C. 40304(d). Therefore, the Commission tentatively declines to adopt the recommendations of the NCBFAA as a standard Information Form reporting requirement, but reserves these recommendations as matters for consideration in the Commission's review of major VSA and alliance agreements that it may seek additional information on through its statutory authority.

The Commission requests additional comment on the proposed changes to the Information Form requirements.

VI. Comments in § 535.603, and Requests for Additional Information in § 535.606

A. Requests for Additional Information

The Shipping Act permits the Commission to request from the person filing the agreement any additional information and documents the Commission considers necessary to make the determinations required by the Act during the 45-day waiting period before an agreement may go into effect.[54] In accordance with 46 U.S.C. 40304(d) and the Commission's general rulemaking authority under 46 U.S.C. 305, the Commission has promulgated regulations regarding the issuance of RFAIs at 46 CFR 535.606. The regulations state that the Commission will publish a notice in the **Federal Register** that it has requested additional information and serve that notice on any commenting parties, but the notice will indicate only that a request was made and will not specify what information is being sought.[55] The purpose of this notice is to allow further public comment on the agreement.[56]

In the ANPR, the Commission noted that its general policy is not to disclose questions issued by the Commission in an RFAI and requested comment on the policy and whether it should be modified.[57] All of the commenters that discussed the issue supported the current policy of not releasing RFAI questions and urged the Commission not to change it. Several commenters asserted that the policy promotes the frank exchange of questions and responses on issues of concern to the Commission, and that publication of the questions could lead to questions being asked for reasons other than regulatory concerns and could prejudice the parties to an agreement as a result of public reaction to the questions.[58] The carriers stated that a RFAI is rooted in large part on confidential information in the possession of the Commission and is a part of the deliberative process, and, just as the Commission does not disclose staff recommendations, it should not disclose the questions that form part of the basis for those recommendations.[59]

Given the comments received, the Commission is not proposing any changes to the treatment of RFAI questions.

B. Third-Party Comments

The Commission's regulations regarding third-party comments on agreement filings are found at 46 CFR 535.603, which provides that persons may file with the Secretary written comments regarding a filed agreement. Section 535.603 provides that, if requested, comments and any accompanying material will be accorded confidential treatment to the fullest extent permitted by law and that such requests must include a statement of legal basis for confidential treatment. The regulation further provides that when a determination is made to disclose all or a portion of a comment, notwithstanding a request for confidentiality, the party requesting confidentiality will be notified prior to disclosure.

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[54] 46 U.S.C. 40304(d).

[55] 46 CFR 535.606(d).

[56] Final Rule, Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984. 49 FR 45320, 45338 (Nov. 15, 1984).

[57] 81 FR at 10196.

[58] WCMTOA/OAKMTOA at 7–8; Port of NY/NJ at 8–9.

[59] Carriers at 25–26.

In the ANPR, the Commission requested comment on its policy with respect to the disclosure of third-party comments. The commenters who discussed the issue universally opined that third-party comments on agreements should be made public unless the submitter asserts that they fall within one of the exemptions from disclosure under FOIA, and the Commission determines that assertion to be valid.[60] These commenters asserted that publishing the comments encourages accuracy, affords agreement parties with the opportunity to provide the Commission with their perspective on the issues raised, and promotes dialogue between the agreement parties and the commenters.

During the past several years, there has been some confusion about how the Commission handles third-party comments to agreements and their accessibility by agreement parties and the public, leading the Commission to tentatively determine that § 535.603 does not sufficiently advise commenters and the public about this process. The Commission tentatively concludes, however, that the current process, which permits requests for copies of third-party comments, has the same advantages as those cited by commenters with respect to publishing comments. Accordingly, the Commission is proposing to amend § 535.603 to describe in more detail the Commission's current process for handling third-party comments and requests comment on any modifications that should be considered.

When the Commission receives a comment on a filed agreement, it is distributed internally to the Commissioners and relevant staff. If the commenter requests confidential treatment, the Secretary will make a prompt determination as to the Commission's ability to protect any comment or portion of a comment from disclosure and inform the submitter. If a member of the public, press, or agreement counsel request a copy of a comment, the Office of the Secretary will provide any comment or part of a comment unless the Secretary has determined that the comment or part of the comment should be afforded confidential treatment.

Currently, late-filed comments are only accepted by leave of the Commission upon a showing of good cause. In order to more efficiently handle late-filed comments, the Commission is proposing to amend § 501.24 to delegate to the Secretary the authority to determine whether to accept such comments.

The Commission requests comment on the proposed revisions to §§ 501.24 and 535.603, which reflect the process described above, and any modifications that should be considered to the process.

VII. Agreement Reporting Requirements in Subpart G of Part 535

A. Background

Under subpart G of part 535, parties to agreements that contain certain authority are required to file periodic Monitoring Report and/or other prescribed reports. Further, parties to agreements with certain types of authority (*e.g.*, rate authority) are required to provide minutes of their meetings. For reasons identified in its ANPR, the Commission is proposing the following modifications to these reporting requirements.

There are currently three sections of the Monitoring Report. Sections I and II apply according to the authorities contained in the agreement. Section III applies to all agreements subject to Monitoring Reports and requires contact information and a signed certification of the Report. The Commission proposes that Section I be modified to apply to agreements between or among three or more ocean common carriers that contain the authority to discuss or agree on capacity rationalization, under the new proposed definition of this authority in § 535.104(e). Agreements subject to reporting under Section I would include vessel sharing and alliance agreements among three or more carriers regardless of whether such agreements contain exclusivity clauses.

There, however, may be agreements below the threshold of three or more members agreeing on the supply of capacity in a trade or service that the Commission may need to monitor. In such cases, the Commission may decide to prescribe reporting requirements pursuant to § 535.702(d). In this regard, the Commission proposes to revise § 535.702(d) to clarify that it applies to any filed agreements, not just to those agreements subject to the Monitoring Report requirements. Further, the Commission proposes to move this authority from § 535.702(d) under the Monitoring Reports section to § 535.701(c) under the general requirements section for reporting requirements in subpart G of part 535. Sections 535.701(c)–(j) of the current regulations would be redesignated sequentially.

In terms of requirements, the Commission proposes to require that parties to capacity rationalization agreements subject to Section I submit quarterly Reports with data on their vessel capacity and utilization separately showing each month of the quarter for the liner services pertaining to the agreement. The provision for advance notice of significant reductions in capacity would be retained along with the narrative statement on any other significant operational changes implemented during the quarter.

Section II of the Monitoring Report applies to carrier agreements containing rate authority with a market share of 35 percent or more. The Commission proposes that the requirements for these agreements be reduced by eliminating the market share, commodity components, and the narrative statement on significant operational changes.

The market share requirement delays the Report because most of the carriers supply this information using commercial data sources, which causes a lag in the Report of 75 days after the end of the quarter. 46 CFR 535.701(f). The Commission subscribes to commercial sources of data and can run periodic data reports as needed. Without the market share requirement, the Commission proposes that the filing deadline for the Report be shortened from 75 to 45 days after the end of each quarter, which would provide more timely data.

Further, the Commission proposes that the reporting requirement for data by commodity be eliminated for the Monitoring Report. However, when essential to monitoring an agreement, the Commission could prescribe specific commodity data reporting pursuant to its authority.

The Commission is also proposing that parties to rate agreements no longer be required to report on the significant operational changes in their services. The Commission believes that reporting this information under VSA and alliance agreements should provide a sufficient understanding of significant operational changes in the U.S. trade lanes. When needed, the Commission could request specific operational information from the parties.

With the elimination of these requirements, it is proposed that parties to rate agreements with a market share of 35 percent or more submit quarterly Monitoring Reports with data on their average revenue, vessel capacity, and utilization for each month of the quarter for the liner services operated by the parties within the geographic scope of the agreement.

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[60] WCMTOA/OAKMTOA Comments at 8; Carrier Comments at 26; PNYNJPA Comments at 9.

As with the Information Form, it is proposed that the Monitoring Report instructions be streamlined by removing definitions repeated within each section and stating them in paragraphs at the beginning of the Report with the understanding that they apply to each section.

Section 535.704(b) defines a ''meeting'' between the parties to an agreement for the purpose of the filing of meeting minutes with the Commission. The Commission proposes that the definition be modified to clarify that the discussions of parties using different forms of technology (*e.g.*, telephone, electronic device, electronic mail, file transfer protocol, electronic or video chat, video conference) still constitute discussions for the purpose of filing minutes.

B. Summary of Comments

The carriers were the only interested parties to submit comments on the proposed changes to the Monitoring Report requirements. The carriers support the changes to reduce the reporting burden but again raise objections to the increase in reporting in connection with the proposed change in the definition of capacity rationalization as it applies to VSA and alliance agreements. They urge the Commission to reduce the reporting burden for these agreements. Further, the carriers generally support the reduction in the filing deadline from 75 to 45 days with the understanding that occasional and reasonable requests for extensions of the deadline would be available as needed. Carriers at 23–24.

C. Discussion

The carriers urge that the Commission reduce the reporting burden for agreements subject to the proposed definition of capacity rationalization, but they provide no specifics or alternative recommendations. As explained above in the section discussing the Information Form, parties to VSA and alliance agreements closely track their service and capacity, and such data is readily available to the parties. The Commission does not believe that the reporting requirements pose an undue regulatory burden. The data is essential for the Commission to monitor the actions of the agreement parties and their impact on the supply of capacity in the U.S. liner trades, and the parties are the best source of information. Further, the Commission proposes to limit the application of the requirements to capacity rationalization agreements between three or more carriers, and eliminate the reporting of information on service changes for parties to rate agreements. Where agreement parties believe reporting is unnecessary or overly burdensome, they may apply and the Commission shall consider an application for waiver of some or all of the Monitoring Report requirements in accordance with § 535.705. Such regulatory relief includes extensions of time to file the reports, which the Commission may grant on a case-by-case basis for good cause.

VIII. Non-Substantive Modifications To Update and Clarify the Regulations in Parts 501 and 535

A. Background

As explained in its ANPR, to update and clarify the regulations, the Commission proposes that:

1. The CFR citation for the delegated authority of the Director of the Bureau of Trade Analysis to prescribe reporting requirements in § 501.27(o) be revised from § 535.702(d) to § 535.701(c) to reflect the proposed change to these regulations;
2. The delegated authority of the Director of the Bureau of Trade Analysis in § 501.27(p) to require the reporting of commodity data on a sub-trade basis from agreement parties be removed, in conjunction with the proposed changes to the reporting requirements;
3. The definition of sailing agreement in § 535.104(bb)[61] be revised to mean an agreement by or among ocean common carriers to coordinate their respective sailing or service schedules of ports, and/or the frequency of vessel calls at ports. The Commission believes that the present definition is more broadly descriptive of the authority of carriers in a VSA where the parties would conceivably rationalize capacity;
4. The regulations in § 535.301(b) on the optional filing of exempt agreements be revised to add that such filings are also exempt from the 45-day waiting period requirement and may become effective upon filing with the FMC;
5. The CFR reference on the application for exemption procedures cited in § 535.301(c) be corrected and revised from § 502.67 to § 502.74;
6. Per the carriers' request in comments submitted to the Commission's retrospective review plan of its regulations, the regulations in § 535.302(a) on non-substantive modifications to effective agreements be amended to add agreement modifications in the number or size of vessels within the range of capacity specified in the agreement pursuant to the express enabling authority for operational matters identified in § 535.408(b)(5)(ii). The Commission expects that this revision to § 535.302(a) would encourage carriers to amend their agreements accordingly with more accurate information, which would improve the clarity of the agreement;
7. The regulations in § 535.302(d) be revised to specify that agreement parties may seek assistance from the Director of the Bureau of Trade Analysis on whether an agreement modification would qualify for an exemption based on the types of exemptions strictly listed and identified in § 535.302, as intended, and not on a general basis as parties have mistakenly interpreted the regulations;
8. The regulations in § 535.404(b) be revised to require that where parties reference port ranges or areas in the geographic scope of their agreement, the parties identify the countries included in such ranges or areas so that the Commission can accurately evaluate the agreement;
9. The formatting requirements for the filing of agreement modifications in § 535.406 be revised to apply to all agreements identified in § 535.201 and subject to the filing regulations of part 535, except assessment agreements;[62]
10. In § 535.501(b) on the electronic submission of the Information Form, the reference to diskette or CD–ROM be removed;[63]
11. The phrase ''whether on a binding basis under a common tariff or a non-binding basis'' in § 535.502(b)(1) be removed from the description of rate authority;
12. In § 535.502(c), the expansion of membership, in addition to the expansion of geographic scope as presently provided, be a modification

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[61] Section 535.104(bb) presently defines a sailing agreement as an agreement between ocean common carriers to provide service by establishing a schedule of ports that each carrier will serve, the frequency of each carrier's calls at those ports, and/or the size and capacity of the vessels to be deployed by the parties. The term does not include joint service agreements, or capacity rationalization agreements.

[62] Section 535.104(d) defines assessment agreements to mean an agreement, whether part of a collective bargaining agreement or negotiated separately, that provides for collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized. Section 535.401(e) requires that assessment agreements be filed and effective upon filing with the FMC.

[63] Subsequent to the ANPR, the Commission implemented its automated agreement filing system by direct final rule. 81 FR 24703 (Apr. 27, 2016).

that requires an Information Form for agreements with any authority identified in § 535.502(b), *i.e.*, rate, pooling, capacity, or service contracting;

13. Section 535.605(c) be added to indicate that a fee specified in § 535.401(h) shall be assessed to process a request for expedited review of a filed agreement;

14. In § 535.701(e) (as redesignated from the current § 535.701(d)) on the electronic submission of Monitoring Reports, the reference to diskette or CD–ROM be removed and replaced with "as provided in § 535.701(f) of this part;"

15. The regulations in § 535.701(f) (as redesignated from the current § 535.701(e)) be revised to state simply that the submission of reports and meeting minutes pertaining to agreements that are required by these regulations may be filed by direct secure electronic transmission in lieu of hard copy, and that detailed information on electronic transmission is available from the Commission's Bureau of Trade Analysis;

16. The phrase "whether on a binding basis under a common tariff or a non-binding basis" in § 535.702(a)(2)(i) be removed from the description of rate authority;

17. The regulations in § 535.702(b) be revised to indicate that rather than using market share data filed by the parties to agreements, the Bureau of Trade Analysis would notify the parties of any changes in their reporting requirements;[64]

18. In § 535.703 on the Monitoring Report Form, the reference to part 2(C) of section I of the Monitoring Report be revised to part 2(B) of section I in conjunction with the proposed modifications to the report; and

19. The regulations in § 535.703(d) on the commodity data requirements of the Monitoring Report be removed.

B. Summary of Comments and Discussion

The carriers were the only interested parties to submit comments on the proposed changes in the regulations. The carriers support the proposal in § 535.302(a) on non-substantive modifications to effective agreements to add agreement modifications in the number or size of vessels within the range specified in the agreement, with the understanding that such amendments to agreements are not required. Carriers at 27. This is the understanding of the Commission because such changes in the number or size of vessels [within the range stated in the agreement] are activities that may be conducted without further filing under the regulation in § 535.408(b)(5)(ii).

The carriers support the proposal in § 535.404(b) to require that agreement parties identify the countries included in a port range or area of the geographic scope of the agreement, provided that the parties need not call directly at each specified country and may change direct calls without filing an amendment to the agreement. The carriers cite an example for the East Coast of South America that includes Brazil, Uruguay, and Argentina. Under this scope, the agreement parties may not directly call in Uruguay but serve the country via feeder from the other ports of call, or may change their services to begin directly calling in Uruguay and serve the other countries via feeder. Carriers at 27.

The Commission believes that so long as the countries are within the range of service whether by direct calls or transshipment via feeder service, there would not be a need to file an amendment to the agreement. If the VSA or alliance agreement is subject to the proposed Monitoring Report requirements, the change in the ports of call would be reported in the parties' quarterly report. However, changes that would completely discontinue service to a country or add new countries would require the filing of an amendment to the geographic scope of the agreement.

On the proposed change to § 535.502(c) to add the expansion of membership as an agreement modification that would require an Information Form, the carriers find it acceptable if clarified that this requirement applies only to agreements that are subject to the Information Form in the first instance, and that only the new member(s) be required to submit the Information Form data. Carriers at 27–28. It is the Commission's understanding that this proposal would only apply to agreements subject to the Information Form requirements because § 535.502(c) states that it pertains to agreements containing any authority identified in § 535.502(b), which lists the types of rate and capacity authorities contained in agreements that would be required to file an Information Form in the first instance. The Commission believes that limiting the amount of Information Form data to only the new members may be sufficient to assess the impact of the agreement modification. The Commission will consider the carriers' proposal and invites public comments on it. In some cases, however, limiting the Information Form data to only new members may require the Commission to seek additional information to fully understand the impact of the agreement modification within the context of the entire membership and scope of the agreement.

IX. Regulatory Analyses and Notices

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11.

The information collection requirements in Part 535-Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984, are currently authorized under OMB Control Number 3072–0045. In compliance with the PRA, the Commission has submitted the proposed revisions to the information collection contained in this proposed rule to the Office of Management and Budget (OMB).

In terms of the estimated public burden of collection, the proposed rule would exempt certain space charter agreements from the 45-day waiting period and Information Form requirements, which amounted 39 initial agreement filings in fiscal year 2015. It proposes to adjust the market share threshold for the waiting period exemption in § 535.311 to 35 percent or less. It would increase the number of capacity rationalization agreements required to submit Information Forms, which amounted to nine agreements in fiscal year 2015. However, it would eliminate the Information Form data requirements for basic operational agreements and significantly reduce the data requirements for carrier agreements with rate authority. There were no new carrier rate agreements filed in the past fiscal year. Further, the proposed rule would require that new members joining existing capacity rationalization or rate agreements provide their Information Form data with the agreement modification. There were two such agreement modifications for new members in fiscal year 2015.

For Monitoring Reports, the proposed rule would require that parties to capacity rationalization agreements with three or more members submit quarterly reports, which at present equates to 22 effective agreements. The rule would also significantly reduce the Monitoring Report data requirements for parties to carrier agreements with rate authority, and at present, there are 10 carrier rate agreements that submit Monitoring Reports. Further, for the filing of meeting minutes with the FMC, the rule proposes to clarify the definition of meeting to include discussions between parties conducted by electronic mail, file transfer protocol, electronic or video chat, and video conference, which is estimated to increase the number of annual minute filings by 20 percent to 942 from 785 in fiscal year 2015. With these proposed reporting changes, the total estimated annual public burden of collection would be 12,027 hours, which would be 1,602 hours, or 12 percent, less than the current annual burden of 13,629 hours, which was last reviewed and approved by OMB in September 2013. Specifically, the reduction in the collection burden primarily reflects the proposed changes associated with the Information Form and Monitoring Report requirements. As noted, the collection burden for carrier parties to rate agreements would be reduced. The collection burden for carrier parties to capacity agreements would increase because of the increase in the number of agreements subject to the reporting requirements.

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[64] As discussed, only parties to rate agreements with a combined market share of 35 percent or more are required to file Monitoring Reports. 46 CFR 535.702(a)(2). If the market share of a rate agreement drops below 35 percent, the Bureau would notify the parties that the agreement is no longer subject to the Monitoring Report regulations.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Whether the Commission's estimate for the burden of the information collection is accurate;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by any of the methods described in the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities, unless the agency head determines that the rule, if promulgated, will not have a significant impact on a substantial number of small entities. 5 U.S.C. 603, 605. The Chairman of the Federal Maritime Commission certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule would revise the filing requirements for agreements by or among vessel-operating common carriers (VOCCs) and/or marine terminal operators (MTOs). The Commission has previously determined that VOCCs and MTOs do not qualify as small entities because the number of employees and/or gross receipts of these regulated businesses typically exceed the thresholds set under the guidelines of the Small Business Administration.[65]

List of Subjects

46 CFR Part 501

Authority delegations, Organization and functions, Seals and insignia.

46 CFR Part 535

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission proposes to amend parts 501 and 535 of Title 46 of Code of Federal Regulations as follows:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

■ 1. The authority citation for part 501 continues to read as:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. 301–307, 40101–41309, 42101–42109, 44101–44106; Pub. L. 89–56, 70 Stat. 195; 5 CFR part 2638; Pub. L. 104–320, 110 Stat. 3870.

■ 2. Amend § 501.24 by adding paragraph (i) to read as follows:

§ 501.24 Delegation to the Secretary

* * * * *

(i) Authority to accept late-filed comments to agreement filings submitted under § 535.603 of this title.

■ 3. Amend § 501.27 by revising paragraph (o) and removing paragraph (p) to read as follows:

§ 501.27 Delegation to and redelegation by the Director, Bureau of Trade Analysis.

* * * * *

(o) Authority to prescribe periodic reporting requirements for, or require Monitoring Reports from, parties to agreements under § 535.701(c) and § 535.702(c) of this chapter.

(p) [Removed]

PART 535—OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

■ 4. The authority citation for part 535 continues to read as:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40101–40104, 40301–40307, 40501–40503, 40901–40904, 41101–41109, 41301–41302, and 41305–41307.

■ 5. Amend § 535.104 by revising paragraphs (e) and (bb) to read as follows:

§ 535.104 Definitions.

* * * * *

(e) *Capacity rationalization* means the authority in an agreement by or among ocean common carriers to discuss, or agree on, the amount of vessel capacity supplied by the parties in any service or trade within the geographic scope of the agreement.

* * * * *

(bb) *Sailing agreement* means an agreement by or among ocean common carriers to coordinate their respective sailing or service schedules of ports, and/or the frequency of vessel calls at ports. The term does not include joint service agreements, or capacity rationalization agreements.

* * * * *

■ 6. Amend § 535.301 by revising paragraphs (b) through (d) to read as follows:

§ 535.301 Exemption procedures.

* * * * *

(b) *Optional filing.* Notwithstanding any exemption from filing, or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission. An agreement that is exempt from the filing requirements of the Act and this part and is optionally filed with the Commission is exempt from the waiting period requirements of the Act and this part. The filing fees for the optional filing of exempt agreements are provided in § 535.401(g).

(c) *Application for exemption.* Applications for exemptions must conform to the general filing requirements for exemptions set forth in § 502.74 of this title.

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[65] See FMC Policy and Procedures Regarding Proper Considerations of Small Entities in Rulemakings 4 (Feb. 7, 2003), from the Web site of the FMC at *http://www.fmc.gov/assets/1/Page/SBREFA_Guidelines_2003.pdf.*

(d) *Retention of agreements by parties and submission to the Commission.* Parties to any agreement that has been exempted from the filing requirements of the Act and this part by the Commission pursuant to section 16 of the Act (46 U.S.C. 40103) must:

(1) Retain the agreement for the term of the agreement and for a period of three years after its termination; and

(2) Upon written request from the Director, Bureau of Trade Analysis, must submit a true and complete copy of the agreement to the Bureau of Trade Analysis within 15 days of the request.

■ 7. Amend § 535.302 by revising paragraph (a)(3), adding paragraph (a)(4), and revising paragraph (d) to read as follows:

§ 535.302 Exemptions for certain modifications of effective agreements.

(a) * * *

(3) Reflects changes in the titles of persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee; or

(4) Reflects changes in the number or size of vessels within the range of capacity specified in the agreement pursuant to the express enabling authority for operational matters identified in § 535.408(b)(5)(ii).

* * * * *

(d) Parties to agreements may seek a determination from the Director of the Bureau of Trade Analysis on whether a particular modification is exempt as a change identified in paragraphs (a) or (b) of this section.

* * * * *

■ 8. Add § 535.308 to subpart C to read as follows:

§ 535.308 Space charter agreements—exemption.

(a) An ocean common carrier agreement is exempted from the waiting period in § 535.604 and becomes effective upon filing if the agreement contains non-exclusive authority to charter or exchange vessel space between two individual carriers and does not contain any authorities identified in § 535.502(b). The term non-exclusive authority means authority that contains no provisions that place conditions or restrictions on the parties' agreement participation or use or offering of competing services.

(b) The filing fee for exempted space charter agreements is provided in § 535.401(g).

■ 9. Amend § 535.311 by revising paragraph (a) to read as follows:

§ 535.311 Low market share agreements—exemption.

(a) Low market share agreement means any ocean common carrier agreement which contains none of the authorities identified in § 535.502(b) and for which the combined market share, based on cargo volume, of the parties in any of the agreement's sub-trades is equal to or less than 35 percent.

* * * * *

■ 10. Revise § 535.402 to read as follows:

§ 535.402 Complete and definite agreements

(a) An agreement filed under the Act must be clear and definite in its terms, must embody the complete, present understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their operations and regulate the relationships among the agreement members, unless those details are matters specifically enumerated as exempt from the filing requirements of this part.

(b) An agreement that arises from the authority of an effective agreement, but whose terms are not fully set forth in the effective agreement to the extent required by paragraph (a) of this section, must be filed with the Commission in accordance with the requirements of this subpart unless exempted under § 535.408.

■ 11. Amend § 535.404 by revising paragraph (b) to read as follows:

§ 535.404 Agreement provisions.

* * * * *

(b) State the ports or port ranges to which the agreement applies as well as any inland points or areas to which it also applies. In referencing geographic port ranges or areas in an agreement, state the name of each country included in such ranges or areas; and

* * * * *

■ 12. Amend § 535.406 by revising the introductory text to read as follows:

§ 535.406 Modifications of agreements.

The requirements of this section apply to all agreements identified in § 535.201 and subject to the filing regulations of this part, except assessment agreements.

* * * * *

■ 13. Amend § 535.408 by revising paragraph (b)(3) to read as follows:

§ 535.408 Activities that may be conducted without further filings.

* * * * *

(b) * * *

(3) The following matters related to stevedoring, terminal, and related services: (i) Joint contracting for marine terminal services (as that term is defined in § 535.309) or stevedoring services by parties to an ocean common carrier agreement if such services are provided to and paid for by the agreement parties;

(ii) Operation of tonnage centers or other joint container marshalling facilities by parties to an ocean common carrier agreement.

* * * * *

■ 14. Amend § 535.501 by revising paragraph (b) to read as:

§ 535.501 General requirements.

* * * * *

(b) Parties to an agreement subject to this subpart shall complete and submit an original and five copies of the Information Form at the time when the agreement is filed. A copy of the Form in *Microsoft Word* and *Excel* format may be downloaded from the Commission's home page at *http://www.fmc.gov,* or a paper copy of the Form may be obtained from the Bureau of Trade Analysis. In lieu of submitting paper copies, parties may complete and submit their Information Form in the Commission's prescribed format electronically using the automated agreement filing system in accordance with the instructions provided on the Commission's home page.

* * * * *

■ 15. Amend § 535.502 by revising paragraphs (a) through (c) to read as follows:

§ 535.502 Agreements subject to the Information Form requirements.

* * * * *

(a) All agreements identified in § 535.201(a), except for exempt agreements identified in § 535.308 and § 535.311;

(b) Modifications to an agreement that add any of the following authorities:

(1) The discussion of, or agreement on, any kind of rate or charge;

(2) The discussion of, or agreement on, any service contract matter;

(3) The establishment of a joint service;

(4) The pooling or division of cargo traffic, earnings, or revenues and/or losses; or

(5) The discussion of, or agreement on, capacity rationalization.

(c) Modifications that expand the geographic scope or membership of an agreement containing any authority identified in paragraph (b) of this section. Modifications to expand the membership of an agreement may limit the Information Form requirements to include only the new members that are the subject of the modification.

■ 16. Revise § 535.503 to read as follows:

§ 535.503 Information Form.

(a) The Information Form, with instructions, for agreements and modifications to agreements subject to this subpart, are set forth in sections I through IV of appendix A of this part. The instructions should be read in conjunction with the Act and this part.

(b) The Information Form must be completed as follows:

(1) Sections I and IV must be completed by parties to all agreements identified in § 535.502;

(2) Section II must be completed by parties to agreements identified in § 535.502 that contain any of the following authorities:

(i) The charter or use of vessel space in exchange for compensation or services; or

(ii) The discussion of, or agreement on, capacity rationalization.

(3) Section III must be completed by parties to agreements identified in § 535.502 that contain any of the following authorities:

(i) The discussion of, or agreement on, any kind of rate or charge;

(ii) The discussion of, or agreement on, any service contract matter;

(iii) The establishment of a joint service; or

(iv) The pooling or division of cargo traffic, earnings, or revenues and/or losses.

■ 17. Revise § 535.603 to read as follows:

§ 535.603 Comment.

(a) *General.* Persons may file with the Secretary written comments regarding a filed agreement. Commenters may submit the comment by email to *secretary@fmc.gov* or deliver to Secretary, Federal Maritime Commission, 800 N. Capitol St. NW., Washington, DC 20573–0001 within the time limit provided in the **Federal Register** notice. Late-filed comments will be received only by leave of the Secretary and only upon a showing of good cause.

(b) *Confidential Information.* Comments and any accompanying material will be accorded confidential treatment to the fullest extent permitted by law. Commenters seeking confidential treatment must mark the comments (or relevant portions thereof) as confidential and must submit, along with their comments, a statement of legal basis for confidential treatment including the citation of appropriate statutory authority (*e.g.,* Freedom of Information Act exemption). The Secretary will evaluate the basis of the request for confidential treatment and inform the commenter as to the Commission's ability to protect the comment from disclosure.

(c) *Requests for Comments.* (1) Any member of the public may request a copy of a comment to a filed agreement from the Secretary.

(2) The Secretary will provide to the requester any comment or portion of a comment that is not determined to be confidential.

(d) The filing of a comment does not entitle a person to:

(1) A reply to the comment by the Commission;

(2) The institution of any Commission or court proceeding;

(3) Discussion of the comment in any Commission or court proceeding concerning the filed agreement; or

(4) Participation in any proceeding that may be instituted.

■ 18. Amend § 535.605 by adding paragraph (c) to read as follows:

§ 535.605 Requests for expedited review.

* * * * *

(c) A fee to process the request for expedited review of a filed agreement will be assessed as specified in § 535.401(h).

* * * * *

■ 19. Amend § 535.701 by:

■ A. Redesignating paragraphs (c) through (j) as paragraphs (d) through (k), respectively;

■ B. Adding a new paragraph (c);

■ C. Revising newly redesignated paragraphs (e), (f), and (g) to read as follows:

§ 535.701 General requirements.

* * * * *

(c) The Commission may prescribe, on an agreement-by-agreement basis, periodic reporting requirements for parties to any agreement identified in § 535.201 and subject to the filing requirements of this part but not identified in § 535.702(a) as subject to the Monitoring Report requirements. The Commission may also prescribe, on an agreement-by-agreement basis, periodic reporting requirements in addition to or in lieu of the Monitoring Report requirements for parties to any agreement identified in § 535.702(a) of this part.

* * * * *

(e) Monitoring Reports and minutes required to be filed by this subpart should be submitted to: Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573–0001. A copy of the Monitoring Report form in *Microsoft Word* and *Excel* format may be downloaded from the Commission's home page at *http://www.fmc.gov,* or a paper copy may be obtained from the Bureau of Trade Analysis. In lieu of submitting paper copies, parties may complete and submit their Monitoring Report in the Commission's prescribed format electronically as provided in paragraph (f) of this section.

(f) Reports and minutes required to be filed by this subpart may be filed by direct secure electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Trade Analysis.

(g) *Time for filing.* Except as otherwise instructed, Monitoring Reports shall be filed within 45 days of the end of each calendar quarter. Minutes of meetings shall be filed within 21 days after the meeting. Other documents shall be filed within 15 days of the receipt of a request for documents.

* * * * *

■ 20. Amend § 535.702 by revising paragraphs (a) and (b) and removing paragraph (d), to read as follows:

§ 535.702 Agreements subject to Monitoring Report and other reporting requirements.

(a) Agreements subject to the Monitoring Report requirements of this subpart are:

(1) An agreement between or among three or more ocean common carriers that contains the authority to discuss or agree on capacity rationalization as defined in § 535.104(e); or

(2) Where the parties to an agreement hold a combined market share, based on cargo volume, of 35 percent or more in the entire geographic scope of the agreement and the agreement contains any of the following authorities:

(i) The discussion of, or agreement on, any kind of rate or charge;

(ii) The discussion of, or agreement on, any service contract matter;

(iii) The establishment of a joint service; or

(iv) The pooling or division of cargo traffic, earnings, or revenues and/or losses.

(b) The determination of an agreement's reporting obligation under § 535.702(a)(2) in the first instance shall be based on the market share data reported on the agreement's Information Form pursuant to § 535.503. Thereafter, the Bureau of Trade Analysis will notify the agreement parties of any change in their reporting requirements.

* * * * *

(d) [Removed]

■ 21. Amend § 535.703 by revising paragraph (c) and removing paragraph (d) to read as:

§ 535.703 Monitoring Report form.

* * * * *

(c) In accordance with the requirements and instructions in appendix B of this part, parties to an agreement subject to part 2(B) of Section I of the Monitoring Report shall submit a narrative statement on any significant reductions in vessel capacity that the parties will implement under the agreement. The term "significant reduction" is defined in appendix B. The narrative statement shall be submitted to the Director, Bureau of Trade Analysis, no later than 15 days after a significant reduction in vessel capacity has been agreed upon by the parties but prior to the implementation of the actual reduction under the agreement.

(d) [Removed]

■ 22. Amend § 535.704 by revising the last sentence of paragraph (b) to read as follows:

§ 535.704 Filing of minutes.

* * * * *

(b) * * * Discussions conducted by telephone, electronic device, electronic mail, file transfer protocol, electronic or video chat, video conference, or other means are included.

* * * * *

■ 23. Revise Appendix A to part 535 to read as follows:

Appendix A to Part 535—Information Form and Information Form Instructions

1. All agreements and modifications to agreements between or among ocean common carriers identified in 46 CFR 535.502 must be accompanied by a completed Information Form to the full extent required in sections I through IV of this Form. Sections I and IV must be completed by all such agreements. Sections II and III must be completed in accordance with the authority contained in each agreement. As applicable, complete each section of this Form in accordance with the specified format provided in FMC Form-150.

2. Where an agreement containing multiple authorities is subject to duplicate reporting requirements in the various sections of this Form, the parties may provide only one response so long as the reporting requirements within each section are fully addressed. The Information Form specifies the data and information which must be reported for each section and the format in which it must be provided. If a party to an agreement is unable to supply a complete response to any item of this Form, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of this Form, if one of the agreement signatories is a joint service operating under an effective agreement that signatory shall respond to the Form as a single agreement party.

3. For clarification of the agreement terminology used in this Form, the parties may refer to the definitions provided in 46 CFR 535.104. In addition, the following definitions shall apply for purposes of this Form: Liner movement means the carriage of liner cargo; liner cargo means cargo carried on liner vessels in a liner service; liner operator means a vessel-operating common carrier engaged in liner service; liner vessel means a vessel used in a liner service; liner service means a definite, advertised schedule of sailings at regular intervals; and TEU means a unit of measurement equivalent to one 20-foot shipping container.

4. When 50 percent or more of the total liner cargo carried by all of the parties in the geographic scope of the agreement was containerized, the required data for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all of the parties in the geographic scope of the agreement was non-containerized, the required data for each party shall be reported in non-containerized units of measurement. The unit of measurement for the non-containerized data must be specified clearly and applied consistently.

5. Where the geographic scope of the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall always be stated separately.

6. For purposes of this Form, the term vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of the liner services pertaining to the agreement or operated by the parties to the agreement.

7. For purposes of this Form, the term a significant operational change means an increase or decrease in a party's liner service, ports of call, frequency of vessel calls at ports, and/or amount of vessel capacity deployment for a fixed, seasonally planned, or indefinite period of time. It excludes incidental or temporary alterations or changes that have little or no operational impact. If no significant operational change is anticipated or planned to be implemented or occur after the agreement is scheduled to become effective, it shall be noted with the term "none" in response.

8. When used in this Form, the terms "entire geographic scope of the agreement" or "agreement-wide" refer to the combined U.S. inbound trade and/or the combined U.S. outbound trade as such trades apply to the geographic scope of the agreement, as opposed to the term "sub-trade," which is defined for reporting purposes as the scope of all liner movements between each U.S. port range and each foreign country within the scope of the agreement. U.S. port ranges are defined as: (a) The Atlantic and Gulf, which includes ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas, all ports bordering upon the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands; and (b) the Pacific, which includes all ports in the States of Alaska, Hawaii, California, Oregon, and Washington; and all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

Section I

Section I applies to all agreements identified in 46 CFR 535.502. Parties to such agreements must complete parts 1 through 4 of this section. The authorities listed in part 4 of this section do not necessarily include all of the authorities that must be set forth in an agreement filed under the Act. The specific authorities between the parties to an agreement, however, must be set forth, clearly and completely, in a filed agreement in accordance with 46 CFR 535.402.

Part 1

State the full name of the agreement.

Part 2

Provide a narrative statement describing the specific purpose(s) of the agreement pertaining to the parties' business activities as ocean common carriers in the foreign commerce of the United States, and the commercial or other relevant circumstances within the geographic scope of the agreement that led the parties to enter into the agreement.

Part 3

List all effective agreements that cover all or part of the geographic scope of this agreement, and whose parties include one or more of the parties to this agreement.

Part 4(A)

Identify whether the agreement authorizes the parties to discuss, or agree on, any kind of rate or charge

Part 4(B)

Identify whether the agreement authorizes the parties to establish a joint service.

Part 4(C)

Identify whether the agreement authorizes the parties to pool cargo traffic or revenues.

Part 4(D)

Identify whether the agreement authorizes the parties to discuss, or agree on, any service contract matter.

Part 4(E)

Identify whether the agreement authorizes the parties to discuss, or agree on, their respective sailing or service schedules of ports, and/or the frequency of vessel calls at ports.

Part 4(F)

Identify whether the agreement authorizes the parties to charter or use vessel space in exchange for compensation or services.

Part 4(G)

Identify whether the agreement authorizes the parties to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e).

Part 4(H)

Identify whether the agreement contains provisions that place conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services.

Section II

Section II applies to agreements identified in 46 CFR 535.502 that contain any of the following authorities: (a) The charter or use of vessel space in exchange for compensation or services; (b) the discussion of, or agreement on, capacity rationalization as defined in 46 CFR 535.104(e). Parties to agreements identified in this section must complete the following parts:

Part 1(A)

For the period prior to when the proposed agreement would become effective, for the liner services pertaining to the agreement and for each party, provide: (a) The name of each service; (b) the name of the carrier(s) directly deploying vessels in each service; (c) the number, names, and IMO numbers of the vessels in each service; (d) the name of the operator of each vessel; (e) the operating capacity of each vessel; (f) the frequency of each service; (g) the port itinerary of each service; (h) the total amount of annual vessel capacity supplied by each service; (i) the names of all of the carriers that charter space on each service but do not directly deploy vessels in the service; and (j) the allocation of vessel space in each service to any carrier. Liner services pertaining to the agreement include any services of the parties that would be terminated or altered as a result of the agreement becoming effective.

Part 1(B)

For the period after the proposed agreement would become effective, for the liner services pertaining to the agreement and for each party, provide: (a) The name of each service, (b) the name of the carrier(s) that would directly deploy vessels in each service; (c) the number, names, and IMO numbers of the vessels in each service; (d) the name of the operator of each vessel; (e) the operating capacity of each vessel; (f) the frequency of each service; (g) the port itinerary of each service; (h) the total amount of annual vessel capacity that would be supplied by each service; (i) the names of all of the carriers that would charter space on each service but would not directly deploy vessels in the service; and (j) the proposed allocation of vessel space in each service to any carrier.

Part 2

For the most recent calendar quarter for which complete data are available, for the liner services pertaining to the agreement and for each party, provide: (a) The name of each service; (b) the total number of sailings of each service; (c) the total amount of vessel capacity made available for each service; (d) the total amount of cargo carried on any vessel space counted above in part (c); and (e) the percentage of utilization on any vessel space counted above in part (c). For purposes of this Form, the percentage of utilization shall be calculated by dividing the amount of cargo carried in part (d) above by the corresponding amount of vessel capacity in part (c) above, which quotient is multiplied by 100. Liner services pertaining to the agreement include any services of the parties that would be terminated or altered as a result of the agreement becoming effective.

Part 3

Provide a narrative statement on any significant operational changes proposed to be implemented under the agreement and their impact on each party's liner services, ports of call, frequency of vessels calls at ports, and/or amount of vessel capacity deployment for each service pertaining to the agreement. Liner services pertaining to the agreement include any services of the parties that would be terminated or altered as a result of the agreement becoming effective.

Section III

Section III applies to agreements identified in 46 CFR 535.502 that contain any of the following authorities: (a) The discussion of, or agreement on, any kind of rate or charge; (b) the establishment of a joint service; (c) the pooling or division of cargo traffic, earnings, or revenues and/or losses; or (d) the discussion of, or agreement on, any service contract matter. Parties to such agreements must complete the following parts:

Part 1

1. For the most recent calendar quarter for which complete data are available, provide the market shares of all liner operators for the entire geographic scope of the agreement. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line.

2. Market share shall be calculated as: The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope during the most recent calendar quarter for which complete data are available, divided by the total liner cargo movement in the entire agreement scope during that same calendar quarter, which quotient is multiplied by 100. The calendar quarter used must be clearly identified. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately.

Part 2

For each party that served all or any part of the geographic scope of the agreement during all or any part of the most recent 12-month period for which complete data are available, provide its total liner revenue, total liner cargo movement, and average revenue for its liner services within the geographic scope of the agreement. For purposes of this Form, total liner revenue means the total revenue in U.S. dollars of each party corresponding to the total cargo movement of its liner services within the geographic scope of the agreement, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis, accessorial charges, surcharges, and charges for inland cargo carriage. Average revenue shall be calculated as the per-cargo unit quotient of each party's total revenue divided by its total cargo movement.

Part 3

For each month of the same calendar quarter used in part 1 of this section, for each liner service operated by the parties to the agreement within the entire geographic scope of the agreement, provide: (a) The name of each service; (b) the total number of sailings for each service; (c) the amount of vessel capacity made available for each service, as measured in terms of: (i) The total amount per service, (ii) the amount allocated to each party of the agreement, and (iii) the amount chartered to non-agreement parties; (d) the total amount of liner cargo carried on any vessel space counted in part (c) above; and (e) the percentage of utilization on any vessel space counted above in part (c) above. For purposes of this Form, the percentage of utilization shall be calculated by dividing the amount of cargo carried in part (d) above by the corresponding amount of vessel capacity in part (c) above, which quotient is multiplied by 100.

Part 4

Provide a narrative statement on any significant operational changes that are anticipated or planned to occur after the agreement is scheduled to become effective that would impact any of the parties' liner services, ports of call, frequency of vessel calls at ports, and/or amount of vessel capacity deployment in any of the liner services operated by the parties to the agreement within the entire geographic scope of the agreement.

Section IV

Section IV applies to all agreements identified in 46 CFR 535.502. Parties to such agreements must complete all items in part 1 of this section.

Part 1(A)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding the Information Form and any information provided therein.

Part 1(B)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding a request for additional information or documents.

Part 1(C)

A representative of the parties shall sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative also shall indicate his or her relationship with the parties to the agreement.

BILLING CODE 6731–AA–P

FMC Form-150

FEDERAL MARITIME COMMISSION
INFORMATION FORM
FOR AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

Section I

Part 1

State the full name of the agreement:

Part 2

Purpose(s) of the agreement and the commercial circumstances that led the parties to enter into the agreement:

Part 3

List in matrix format, all effective agreements that cover all or part of the geographic scope of this agreement, and indicate which are members of the agreement:

Agreements in all or part of the geographic scope	Parties to this Agreement that are members of the agreements listed ('x' as appropriate)					
	Carrier A [name]	Carrier B	Carrier C	Carrier D	Carrier E	Etc
Agmt 1 [name]						
Agmt 2						
Agmt 3						
Etc						

Part 4

Identify whether the agreement:

(A) authorizes the parties to discuss, or agree on, any kind of rate or charge .... Yes☐ No☐

(B) authorizes the parties to establish a joint service. .... Yes☐ No☐

(C) authorizes the parties to pool cargo or revenues. .... Yes☐ No☐

(D) authorizes the parties to discuss, or agree on, any service contract matter. .... Yes☐ No☐

(E) authorizes the parties to discuss, or agree on, their respective sailing or service schedules of ports, and/or the frequency of vessel calls at ports. .... Yes☐ No☐

(F) authorizes the parties to charter or use vessel space in exchange for compensation or services. .... Yes☐ No☐

(G) authorizes the parties to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e). .... Yes☐ No☐

(H) contains provisions that place conditions or restrictions on the parties' agreement participation in other agreements, and/or use or offering of services operating within the geographic scope of the Agreement. .... Yes☐ No☐

Section II

Part 1(A)

Prior to when the proposed agreement would become effective, for the liner services pertaining to the agreement and for each party, provide:

(1) Service Name	xxxx			
(2) Name of carriers deploying vessels	xxxx	xxxx	xxxx	Etc.
(3) Number of Ships	####			
Ship name	xxxx	xxxx	xxxxx	Etc.
IMO number	####	####	####	Etc.
(4) Operator	xxxx	xxxx	xxxx	Etc.
(5) Operating Capacity in TEU	#,###	#,###	#,###	Etc.
(6) Frequency	#### per xxxx			
(7) Port Itinerary	xxxx, xxxx, ...			
(8) Annual Vessel Capacity	#,###			
(9) Space Charterer(s)	xxxx			
(10) Allocation in TEU by carrier:				
Carrier	xxxx	xxxx	xxxx	Etc.
TEU	#,###	#,###	#,###	Etc.

Part 1(B)

After the proposed agreement would become fully operational, for the liner services pertaining to the agreement and for each party, provide:

(1) Service Name	xxxx			
(2) Name of carriers deploying vessels	xxxx	xxxx	xxxx	Etc.
(3) Number of Ships	####			
Ship name	xxxx	xxxx	xxxx	Etc.
IMO number	####	####	####	Etc.
(4) Operator	xxxx	xxxx	xxxx	Etc.
(5) Operating Capacity in TEU	#,###	#,###	#,###	Etc.
(6) Frequency	#### per xxxx			
(7) Port Itinerary	xxxx, xxxx, ...			
(8) Annual Vessel Capacity	#,###			
(9) Space Charterer(s)	xxxx			
(10) Allocation in TEU by carrier:				
Carrier	xxxx	xxxx	xxxx	Etc.
TEU	#,###	#,###	#,###	Etc.

Part 2

For the most recent calendar quarter for which complete data are available, for the liner services pertaining to the agreement and for each party, provide the names of each carrier and liner service, as well as:

	No. of Sailings	Total Vessel Capacity	Total Cargo Lift	Total Utilization %
Carrier A [name]				
Liner Service 1 [name]	##	#,###	#,###	##.#%
Liner Service 2	##	#,###	#,###	##.#%
Liner Service 3, Etc	##	#,###	#,###	##.#%
Carrier B				
Liner Service 1	##	#,###	#,###	##.#%

Liner Service 2	##	#,###	#,###	##.#%
Liner Service 3, Etc	##	#,###	#,###	##.#%

Carrier C, Etc

Part 3

Narrative statement of any significant operational changes proposed to be implemented under the agreement and their impact on each party's liner services, ports of call, frequency of vessels calls at ports, and/or amount of vessel capacity deployment for each service pertaining to the agreement:

____

____

Section III

Part 1 - Market Share

Agreement-Wide U.S. Inbound (or Outbound)

Time Period: [Calendar Quarter and Year]

	TEUs [or other identified units]	Percent
Agreement Members' Market Share		
Carrier A [Name]	#,###	##.#%
Carrier B	#,###	##.#%
Carrier C	#,###	##.#%
Etc....		
Total Agreement	#,###	##.#%

Non-Agreement Members' Market Share		
Carrier A [Name]	#,###	##.#%
Carrier B	#,###	##.#%
Carrier C	#,###	##.#%
Etc....		
Total Non-Agreement	#,###	##.#%
Total Trade	#,###	100%

Part 2 - Total Liner Cargo and Revenues

Agreement-Wide U.S. Inbound (or Outbound)

Time Period: [12-months]

	Total Revenue	TEUs [or other units, identified]	Average Revenue
Carrier A [Name]	$	#,###	$
Carrier B	$	#,###	$
Carrier C	$	#,###	$
Etc....			

Part 3

For each month of the same calendar quarter used in part 1 of this section, for each liner service operated by the parties to the agreement within the entire geographic scope of the agreement, provide:

Service Name:

Direction:

	No. of Sailings	Total Vessel Capacity	Total Cargo Lift	Total Utilization %	Carrier A Capacity	Carrier A Cargo Lift	Carrier B Capacity	Carrier B Cargo Lift	Etc	Third Party Capacity	Third Party Lift
Month 1	###	#,###	#,###	##.#%	#,###	#,###	#,###	#,###	....	#,###	#,###
Month 2	###	#,###	#,###	##.#%	#,###	#,###	#,###	#,###	....	#,###	#,###

Month 3	###	#,###	#,###	##.#%	#,###	#,###	#,###	#,###	....	#,###	#,###
Quarter Total	###	#,###	#,###	##.#%	#,###	#,###	#,###	#,###	....	#,###	#,###

Part 4

Narrative statement of any significant operational changes that are anticipated or planned to occur after the agreement is scheduled to become effective that would impact any of the parties' liner services, ports of call, frequency of vessel calls at ports, and/or amount of vessel capacity deployment in any of the liner services operated by the parties to the agreement within the entire geographic scope of the agreement.

____

____

Section IV

Contact Persons and Certification

Part 1(A)

Person(s) to contact regarding Information Form

(1) Name ____
(2) Title ____
(3) Firm Name and Business _____________________________________
(4) Business Telephone Number ___________________________________
(5) Business Fax Number ____
(6) Business Email Address ______________________________________

Part 1(B)

Individual located in the United States designated for the limited purpose of receiving notice of an issuance of a Request for Additional Information or Documents (see 46 CFR 535.606).

(1) Name ____
(2) Title ____
(3) Firm Name and Business _____________________________________

(4) Business Telephone Number ____________________________

(5) Business Fax Number ____________________________

(6) Business Email Address ____________________________

Part 1(C) - Certification

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct and complete.

Signature ____________________________

Date ____________________________

Name (please print or type) ____________________________

Title ____________________________

Relationship with parties to agreement ____________________________

BILLING CODE 6731–AA–C

■ 24. Revise Appendix B to part 535 to read as follows:

Appendix B to Part 535—Monitoring Report Form and Instructions

Monitoring Report Instructions

1. All agreements between or among ocean common carriers identified in 46 CFR 535.702(a) must submit completed Monitoring Reports to the full extent required in sections I through III of this Report. Sections I and II must be completed in accordance with the authority contained in each agreement. Section III must be completed by all agreements subject to the Monitoring Report requirements. As applicable, complete each section of this Report in accordance with the specified format provided in FMC Form-151

2. Where an agreement containing multiple authorities is subject to duplicate reporting requirements in the various sections of this Report, the parties may provide only one response so long as the reporting requirements within each section are fully addressed. The Monitoring Report specifies the data and information which must be reported for each section and the format in which it must be provided. If a party to an agreement is unable to supply a complete response to any item of this Report, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of this Report, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Report as a single agreement party.

3. For clarification of the agreement terminology used in this Report, the parties may refer to the definitions provided in 46 CFR 535.104. In addition, the following definitions shall apply for purposes of this Report: Liner movement means the carriage of liner cargo; liner cargo means cargo carried on liner vessels in a liner service; liner operator means a vessel-operating common carrier engaged in liner service; liner vessel means a vessel used in a liner service; liner service means a definite, advertised schedule of sailings at regular intervals; and TEU means a unit of measurement equivalent to one 20-foot shipping container.

4. When 50 percent or more of the total liner cargo carried by all of the parties in the geographic scope of the agreement was containerized, the required data for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all of the parties in the geographic scope of the agreement was non-containerized, the required data for each party shall be reported in non-containerized units of measurement. The unit of measurement for the non-containerized data must be specified clearly and applied consistently.

5. Where the geographic scope of the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall always be stated separately.

6. For purposes of this Report, the term vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of the liner services pertaining to the agreement or operated by parties to the agreement.

7. For purposes of this Report, the term a significant operational change means an increase or decrease in a party's liner service, ports of call, frequency of vessel calls at ports, and/or amount of vessel capacity deployment for a fixed, seasonally planned, or indefinite period of time. It excludes incidental or temporary alterations or changes that have little or no operational impact. If no significant operational change was implemented or occurred for the quarter, it shall be noted with the term "none" in response.

8. When used in this Report, the terms "entire geographic scope of the agreement" or "agreement-wide" refer to the combined U.S. inbound trade and/or the combined U.S. outbound trade as such trades apply to the geographic scope of the agreement, as opposed to the term "sub-trade," which is defined for reporting purposes as the scope of all liner movements between each U.S. port range and each foreign country within the scope of the agreement. U.S. port ranges are defined as: (a) The Atlantic and Gulf, which includes ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas, all ports bordering upon the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands; and (b) the Pacific, which includes all ports in the States of Alaska, Hawaii, California, Oregon, and Washington, all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

Section I

Section I applies to agreements identified in 46 CFR 535.702(a)(1) between or among three or more ocean common carriers that contain the authority to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e). Parties to such agreements must complete the following parts:

Part 1

State the full name of the agreement and the agreement number assigned by the FMC.

Part 2(A)

For each month of the preceding calendar quarter, for the liner services pertaining to the agreement and for each party, provide: (a) The name of each service; (b) the total number of sailings for each service; (c) the amount of vessel capacity made available for each service, as measured in terms of: (i) The total amount per service, (ii) the amount allocated to each party of the agreement, and (iii) the amount chartered to non-agreement parties; (d) the total amount of liner cargo carried on any vessel space counted in part (c) above; and (e) the percentage of utilization on any vessel space counted in part (c) above. For purposes of this Report, the percentage of utilization shall be calculated by dividing the amount of cargo carried in part (d) above by the corresponding amount of vessel capacity in part (c) above, which quotient is multiplied by 100.

Part 2(B)

Provide a narrative statement on any significant reductions, to be implemented under the agreement, in the amounts of vessel capacity for the parties' liner services that pertain to the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and the reasons for the significant reduction and its effects on the liner service and the total amount of vessel capacity for such service that would be subject to the reduction. The narrative statement shall be submitted to the Director, Bureau of Trade Analysis, no later than 15 days after a significant reduction in the amount of vessel capacity has been agreed upon by the parties but prior to the implementation of the actual reduction under the agreement. For purposes of this part, a significant reduction refers to the removal from a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant reduction excludes instances when vessels may be temporarily altered, or when vessels are removed from a liner service and vessels of similar or greater capacity are substituted. It also excludes operational changes in vessels or vessel space that would have little or no impact on the amount of vessel capacity offered in a liner service or a trade.

Part 3

Excluding those changes already reported in part 2(B) of this section, provide a narrative statement of any other significant operational changes implemented under the agreement during the preceding calendar quarter and their impact on each party's liner services, ports of call, frequency of vessel calls at ports, and/or amount of vessel capacity deployment for each service pertaining to the agreement.

Section II

Section II applies to agreements identified in 46 CFR 535.702(a)(2) where the parties to the agreement hold a combined market share, based on cargo volume, of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement and the agreement authorizes any of the following authorities: (a) The discussion of, or agreement on, any kind of rate or charge; (b) the establishment of a joint service; (c) the pooling or division of cargo traffic, earnings, or revenues and/or losses; (d) the discussion of, or agreement on, any service contract matter. Parties to such agreements must complete the following parts.

Part 1

State the full name of the agreement and the agreement number assigned by the FMC.

Part 2

For each month of the preceding calendar quarter and for each party, provide its total liner revenue, total liner cargo movement, and average revenue for its liner services within the entire geographic scope of the agreement. For purposes of this Report, total liner revenue means the total revenue in U.S. dollars of each party corresponding to the total cargo movement of its liner services within the geographic scope of the agreement, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis, accessorial charges, surcharges, and charges for inland cargo carriage. Average revenue shall be calculated as the per-cargo unit quotient of each party's total revenue divided by its total cargo movement

Part 3

For each month of the preceding calendar quarter, for each liner service operated by the parties to the agreement within the entire geographic scope of the agreement, provide: (a) The name of each service; (b) the total number of sailings for each service; (c) the amount of vessel capacity made available for each service, as measured in terms of: (i) The total amount per service, (ii) the amount allocated to each party of the agreement, and (iii) the amount chartered to non-agreement parties; (d) the total amount of liner cargo carried on any vessel space counted in part (c) above; and (e) the percentage of utilization on any vessel space counted in part (c) above. For purposes of this Report, the percentage of utilization shall be calculated by dividing the amount of cargo carried in part (d) above by the corresponding amount of vessel capacity in part (c) above, which quotient is multiplied by 100.

Section III

Section III applies to all agreements identified in 46 CFR 535.702(a). Parties to such agreements must complete all items in part 1 of this section.

Part 1(A)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part 1(B)

A representative of the parties shall sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative also shall indicate his or her relationship with the parties to the agreement.

BILLING CODE 6731–AA–P

FMC Form-151

FEDERAL MARITIME COMMISSION
MONITORING REPORT
FOR AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

Section I

Part 1

State the full name and FMC number of the agreement:

____

____

FMC No.: ______________________________________

Part 2(A)

For each month of the preceding calendar quarter, for the liner services pertaining to the agreement and for each party, provide:

Service Name:

Direction: [US Inbound or Outbound]

	No. of Sailings	Total Vessel Capacity	Total Cargo Lift	Total Utilization %	Carrier A Vessel Capacity	Carrier A Cargo Lift	Carrier B Vessel Capacity	Carrier B Cargo Lift	Etc.	Third Party Capacity	Third Party Lift
Month 1	###	#,###	#,###	##.#%	#,###	#,###	#,###	#,###	....	#,###	#,###
Month 2	###	#,###	#,###	##.#%	#,###	#,###	#,###	#,###	....	#,###	#,###
Month 3	###	#,###	#,###	##.#%	#,###	#,###	#,###	#,###	....	#,###	#,###
Quarter Total	###	#,###	#,###	##.#%	#,###	#,###	#,###	#,###	....	#,###	#,###

Part 2(B)

Narrative statement on any significant reductions in vessel capacity to be implemented (submit statement no later than 15 days after a reduction has been agreed upon but prior to the implementation of the reduction):

____

____

Part 3

Narrative statement of any other significant operational changes implemented under the agreement during the preceding calendar quarter and their impact on each party's liner services, ports of call, frequency of vessel calls at ports, and/or amount of vessel capacity deployment for each service pertaining to the agreement:

____

____

Section II

Part 1

State the full name and FMC number of the agreement:

____

____

FMC No.: ______________________________________

Part 2 - Total Liner Cargo and Revenues

For the each month of the preceding calendar quarter and for each party, provide:

Agreement-Wide U.S. Inbound (or Outbound)
Time Period: [Month 1]

	Total Revenue	TEUs [or other units, identified]	Average Revenue
Carrier A [Name]	$	#,###	$
Carrier B	$	#,###	$

Carrier C	$	#,###	$
Etc....			

Time Period: [Month 2]

	Total Revenue	TEUs [or other units, identified]	Average Revenue
Carrier A [Name]	$	#,###	$
Carrier B	$	#,###	$
Carrier C	$	#,###	$
Etc....			

Time Period: [Month 3]

	Total Revenue	TEUs [or other units, identified]	Average Revenue
Carrier A [Name]	$	#,###	$
Carrier B	$	#,###	$
Carrier C	$	#,###	$
Etc....			

Part 3 – Vessel Capacity and Utilization by Service

For each month of the preceding calendar quarter, for each liner service operated by the parties to the agreement within the entire geographic scope of the agreement, provide:

Service Name:

Direction: [US Inbound/US Outbound]

	No. of Sailings	Total Vessel Capacity	Total Cargo Lift	Total Utilization %	Carrier A Vessel Capacity	Carrier A Cargo Lift	Carrier B Vessel Capacity	Carrier B Cargo Lift	Etc.	Third Party Capacity	Third Party Lift
Month 1	###	#,###	#,###	##.#%	#,###	#,###	#,###	#,###	....	#,###	#,###
Month 2	###	#,###	#,###	##.#%	#,###	#,###	#,###	#,###	....	#,###	#,###

Month 3	###	#,###	#,###	##.#%	#,###	#,###	#,###	#,###	....	#,###	#,###
Quarter Total	###	#,###	#,###	##.#%	#,###	#,###	#,###	#,###	....	#,###	#,###

Section IV

Contact Persons and Certification

Part 1(A)

Person(s) to contact regarding Monitoring Report

(1) Name

(2) Title

(3) Firm Name and Business

(4) Business Telephone Number

(5) Business Fax Number

(6) Business Email Address

Part 1(B) - Certification

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct and complete.

Signature

Date

Name (please print or type)

Title

Relationship with parties to agreement

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–18805 Filed 8–12–16; 8:45 am]

BILLING CODE 6731–AA–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58 and CC Docket No. 01–92, Report No. 3047]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Notice of rulemaking petition; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** of July 29, 2016, concerning request for oppositions on Petitions for Reconsideration and Clarification. The document contained incorrect dates.

DATES: Oppositions to the Petitions must be filed on or before August 15, 2016. Replies to an opposition must be filed on or before August 25, 2016.

FOR FURTHER INFORMATION CONTACT: Suzanne Yelen, Wireline Competition Bureau, (202) 418–7400, email: *Suzanne.Yelen@fcc.go.*

SUPPLEMENTARY INFORMATION: This summary contains corrections to the dates portion of a **Federal Register** summary, 81 FR 49921 (July 29, 2016).

In the FR Doc. 2016–17900, published July 29, 2016 (81 FR 49921), make the following correction.

On page 49921, in the third column, in the "dates" section, correct the second sentence to read "Replies to an opposition must be filed on or before August 25, 2016".

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary, Office of the Secretary.

[FR Doc. 2016–19308 Filed 8–12–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2015–0148; 4500030113]

RIN 1018–BA86

Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination for the Proposed Listing of the Headwater Chub and Distinct Population Segment of the Roundtail Chub as Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the determination of whether the headwater chub (*Gila nigra*) and a distinct population segment of the roundtail chub (*Gila robusta*) are threatened species, and we announce the reopening of the comment period on the proposed rules to add these species to the List of Endangered and Threatened Wildlife. We are taking this action based on our finding that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to our proposed regulations to add these species to the List of Endangered and Threatened Wildlife, making it necessary to solicit additional information by reopening the comment period for 30 days.

DATES: The comment period end date is September 14, 2016. We request that comments be submitted by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the appropriate Docket No.: FWS–R2–ES–2015–0148 for the proposed threatened status for headwater chub and the roundtail chub distinct population segment. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2015–0148; U.S. Fish & Wildlife Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by one of the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be fully considered in the final determinations.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office; telephone 602–242–0210; facsimile 602–242–2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800–877–8339).

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2015 (80 FR 60754), we published a proposed rule to determine that the headwater chub and the lower Colorado River basin distinct population segment (DPS) of the roundtail chub are threatened species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). For a description of previous Federal actions concerning these species, please refer to the proposed listing rule (October 7, 2015; 80 FR 60754). We solicited and received independent scientific review of the information contained in the proposed rule from peer reviewers with expertise in these two chub species, in accordance with our July 1, 1994, peer review policy (59 FR 34270).

Section 4(b)(6) of the Act and its implementing regulations in title 50 of the Code of Federal Regulations at 50 CFR 424.17(a) require that we issue one of four documents within 1 year of a proposed determination: (1) A final rule to implement such determination or revision, (2) a finding that such revision should not be made, (3) a withdrawal of the proposed rule upon a finding that available evidence does not justify the proposed action, or (4) a document extending such 1-year period by an additional period of not more than 6 months because there is substantial disagreement among scientists knowledgeable about the species regarding the sufficiency or accuracy of the available data relevant to the proposed determination or revision.

During the public comment period, we received multiple comments on the proposed listing determinations from scientists with knowledge of the species regarding the sufficiency or accuracy of the available data used to support these proposed regulations, as well as the methodology used to develop the proposed rule. We also received comments through the peer review process on the proposed rule from scientists with expertise on the biology of chubs or similar species. In particular, specific comments questioned the taxonomic distinctness of the two species. This evidence of substantial disagreement regarding the sufficiency or accuracy of the available data warrants a 6-month extension before the final determination.

Currently, the American Fisheries Society (Page et al. 2013, p. 71), which is recognized as the authority in establishing taxonomic status of fish, considers headwater chub and roundtail chub to be separate species. Consequently, in the proposed rule (October 7, 2015; 80 FR 60754) we evaluated headwater and roundtail chubs as separate species. However, commenters raised questions regarding the taxonomic distinctness of the headwater and roundtail chubs, as related to the Gila chub (*Gila intermedia*). The Gila chub is listed as an endangered species (November 2, 2005; 70 FR 66664). Some scientists knowledgeable about the species contend that the three entities are not separate species, but instead constitute a "species complex."

Since our analysis, new information is available regarding taxonomy and genetic analysis published by Dowling et al. 2015 (entire). In addition, the Arizona Game and Fish Department requested that the American Fisheries Society convene a panel or workshop to address the five following objectives:

(1) Determine if the taxonomic classification of the three species remains valid and scientifically defensible given both historical and recent studies and information;

(2) If the taxonomic classification is found invalid, determine a defensible taxonomic classification of the chub complex using the best available science;

(3) Provide a new set of guidelines or classification key to follow;

(4) Publish the findings and recommendations of this panel; and

(5) Provide the results to the Southwest Region of the U.S. Fish and Wildlife Service.

The American Fisheries Society agreed to commence a Names of Fishes panel to evaluate the most recent literature associated with roundtail chub, headwater chub, and Gila chub taxonomy. The panel met in April 2016, but has not produced a decision report. However, our understanding is that a report is forthcoming in the immediate future.

As a result of the comments we received during the comment period, we find that there is substantial disagreement among scientists knowledgeable about the species regarding the sufficiency or accuracy of the available data that are relevant to our determination of the proposed regulations. Moreover, the American Fisheries Society's decision on the taxonomy of the roundtail chub, headwater chub, and Gila chub is expected in the immediate future. In consideration of these scientific disagreements, and with expectation that additional information will resolve the disagreement and that a potential solution is forthcoming, we have determined that a 6-month extension of the final determinations for these rulemakings is warranted. Thus, we hereby extend the final determinations for 6 months in order to solicit information that will help to clarify these issues and to fully analyze this information.

As noted in the proposed listing rule (October 7, 2015; 80 FR 60754), section 4(b)(6)(A) of the Act requires that we make final listing determinations within 1 year of the proposed rule, which would be October 7, 2016. However, as previously stated, section 4(b)(6)(B) of the Act authorizes a 6-month extension, which would extend our final decisions to April 7, 2017.

Public Comments

We will accept written comments and information during this reopened comment period on our proposed regulations for the headwater chub and the lower Colorado River basin DPS of the roundtail chub that was published in the **Federal Register** on October 7, 2015 (80 FR 60754). We will consider any information and recommendations received during this open comment period. We intend that any final action resulting from these proposals be as accurate as possible and be based on the best available scientific and commercial data.

In consideration of the scientific and other comments received regarding the data used to support these proposed regulations, we are particularly interested in new information and data regarding genetics and morphology pertaining to roundtail chub, headwater chub, and Gila chub that would aid in the ongoing taxonomic classification of these species. New information includes data that was not included in the proposed rule and associated documents for the headwater and roundtail chubs because it was not available to the Service or was not completed at the time.

If you previously submitted comments or information on the proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determinations. Our final determinations will take into consideration all written comments and any additional information we received.

You may submit your comments and materials concerning the October 15, 2015, proposed rule (80 FR 60754) by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Service Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2015–0148. Copies of the proposed rule are also available at *http://www.fws.gov/southwest/es/arizona.*

Authority The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 4, 2016.

Matthew Huggler,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–19340 Filed 8–12–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 160219129–6129–01]

RIN 0648–BF78

List of Fisheries for 2017

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its proposed List of Fisheries (LOF) for 2017, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2017 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of mortality and serious injury of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: Comments must be received by September 14, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0045, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0045,*
2. Click the "Comment Now!" icon, complete the required fields,
3. Enter or attach your comments.

- *Mail:* Submit written comments to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Lisa White, Office of Protected Resources, 301–427–8494; Allison Rosner, Greater Atlantic Region, 978–281–9328; Jessica Powell, Southeast Region, 727–824–5312; Elizabeth Petras, West Coast Region, 206–526–6155; Aleria Jensen, Alaska Region, 907–586–7236; Dawn Golden, Pacific Islands Region, 808–725–5000. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental mortality and serious injury of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SARs) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock. If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock will be placed in Category III (unless those fisheries interact with other stock(s) in which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2: Tier 2 considers fishery-specific mortality and serious injury for a particular stock.

Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (*i.e.,* frequent incidental mortality and serious injury of marine mammals).

Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (*i.e.,* occasional incidental mortality and serious injury of marine mammals).

Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level (*i.e.,* a remote likelihood of or no known incidental mortality and serious injury of marine mammals).

Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (*e.g.,* a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II). Stocks driving a fishery's classification are denoted with a superscript "1" in Tables 1 and 2.

Other Criteria That May Be Considered

The tier analysis requires a minimum amount of data, and NMFS does not have sufficient data to perform a tier analysis on certain fisheries. Therefore, NMFS has classified certain fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, or according to factors discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995) and listed in the regulatory definition of a Category II fishery: "In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental mortality or serious injury is 'frequent,' 'occasional,' or 'remote' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries" (50 CFR 229.2).

Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species and/or stocks incidentally killed or injured in each commercial fishery. The list of species and/or stocks incidentally killed or injured includes "serious" and "non-serious" documented injuries as described later in the List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean and the Atlantic Ocean, Gulf of Mexico, and Caribbean sections. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs and injury determination reports. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. The best available scientific information used in the SARs reviewed for the 2017 LOF generally summarizes data from 2009–2013. NMFS also reviews other sources of new information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fisher self-reports (*i.e.*, MMPA reports), and anecdotal reports from that time period. In some cases, more recent information may be available and used in the LOF, but in an effort to be consistent with the most recent SARs and across the LOF, NMFS typically restricts the analysis to data within the five-year time period summarized in the current SAR.

For fisheries with observer coverage, species or stocks are generally removed from the list of marine mammal species and/or stocks incidentally killed or injured if no interactions are documented in the five-year timeframe summarized in that year's LOF. For fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.*, fishery has low observer coverage and stranding network data include evidence of fisheries interaction that cannot be attributed to a specific fishery) species and stocks may be retained for longer than five years. For these fisheries, NMFS will review the other sources of information listed above and use its discretion to decide when it is appropriate to remove a species or stock.

Where does NMFS obtain information on the level of observer coverage in a fishery on the LOF?

The best available information on the level of observer coverage and the spatial and temporal distribution of observed marine mammal interactions is presented in the SARs. Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. Starting with the 2005 SARs, each SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including the observer coverage in those fisheries. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are generally not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Fishery information presented in the SARs' appendices and other resources referenced during the tier analysis may include: Level of observer coverage; target species; levels of fishing effort; spatial and temporal distribution of fishing effort; characteristics of fishing gear and operations; management and regulations; and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources Web site at: *http://www.nmfs.noaa.gov/pr/sars/*. Information on observer coverage levels in Category I, II, and III fisheries can be found in the fishery fact sheets on the NMFS Office of Protected Resources' Web site: *http://www.nmfs.noaa.gov/pr/interactions/fisheries/lof.html*. Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's Web site: *http://www.st.nmfs.gov/observer-home/*.

How do I find out if a specific fishery is in Category I, II, or III?

This rule includes three tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S.-authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRTs).

Are high seas fisheries included on the LOF?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (*e.g.*, trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 by a "*" after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

HSFCA permits are valid for five years, during which time Fishery Management Plans (FMPs) can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008). Additional information about HSFCA permits can be found at: *http://www.nmfs.noaa.gov/ia/permits/highseas.html.*

Where can I find specific information on fisheries listed on the LOF?

Starting with the 2010 LOF, NMFS developed summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: When the fishery was added to the LOF; the basis for the fishery's initial classification; classification changes to the fishery; changes to the list of species and/or stocks incidentally killed or injured in the fishery; fishery gear and methods used; observer coverage levels; fishery management and regulation; and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under "How Do I Find Out if a Specific Fishery is in Category I, II, or III?" on the NMFS Office of Protected Resources' Web site: *http://www.nmfs.noaa.gov/pr/interactions/fisheries/lof.html,* linked to the "List of Fisheries by Year" table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets is taking significant time to complete. NMFS began posting Category III fishery fact sheets online with the LOF for 2016.

Am I required to register under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How do I register and receive my Marine Mammal Authorization Program (MMAP) authorization certificate?

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials. In the Pacific Islands, West Coast, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail or with their state or Federal license or permit at the time of issuance or renewal. In the Greater Atlantic Region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year. Certificates may also be obtained by visiting the Greater Atlantic Regional Office Web site (*http://www.greateratlantic.fisheries.noaa.gov/Protected/mmp/mmap/*). In the Southeast Region, NMFS will issue vessel or gear owners notification of registry and vessel or gear owners may receive their authorization certificate by contacting the Southeast Regional Office at 727–209–5952 or by visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/protected_resources/marine_mammal_authorization_program/*) and following the instructions for printing the certificate.

The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal license or permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals fishing in Category I and II fisheries for which no state or Federal license or permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

How do I renew my registration under the MMAP?

In Alaska regional and Greater Atlantic regional fisheries, registrations of vessel or gear owners are automatically renewed and participants should receive an authorization certificate by January 1 of each new year. In Pacific Islands regional fisheries, vessel or gear owners receive an authorization certificate by January 1 for state fisheries and with their permit renewal for federal fisheries. In West Coast regional fisheries, vessel or gear owners receive authorization with each renewed state fishing license, the timing of which varies based on target species. Vessel or gear owners who participate in fisheries in these regions and have not received authorization certificates by January 1 or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **FOR FURTHER INFORMATION**).

In Southeast regional fisheries, vessel or gear owners' registrations are automatically renewed and participants will receive a letter in the mail by January 1 instructing them to contact the Southeast Regional Office to have an authorization certificate mailed to them or to visit the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/protected_resources/marine_mammal_authorization_program/*) to print their own certificate.

Am I required to submit reports when I kill or injure a marine mammal during the course of commercial fishing operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II, or III) within 48 hours of the end of the fishing trip or, in the case of non-vessel fisheries, fishing activity. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported.

Mortality/injury reporting forms and instructions for submitting forms to NMFS can be found at: *http://www.nmfs.noaa.gov/pr/interactions/*

mmap/#form or by contacting the appropriate Regional office (see **FOR FURTHER INFORMATION**). Forms may be submitted via any of the following means: (1) Online using the electronic form; (2) emailed as an attachment to *nmfs.mireport@noaa.gov;* (3) faxed to the NMFS Office of Protected Resources at 301–713–0376; or (4) mailed to the NMFS Office of Protected Resources (mailing address is provided on the postage-paid form that can be printed from the web address listed above). Reporting requirements and procedures can be found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 states that the Secretary is not required to place an observer on a vessel if the facilities for quartering an observer or performing observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; thereby authorizing the exemption of vessels too small to accommodate an observer from this requirement. However, U.S. Atlantic Ocean, Caribbean, or Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)) will not be exempted from observer requirements, regardless of their size. Observer requirements can be found in 50 CFR 229.7.

Am I required to comply with any marine mammal TRP regulations?

Table 4 in this rule provides a list of fisheries affected by TRPs and TRTs. TRP regulations can be found at 50 CFR 229.30 through 229.37. A description of each TRT and copies of each TRP can be found at: *http://www.nmfs.noaa.gov/pr/interactions/trt/teams.html.* It is the responsibility of fishery participants to comply with applicable take reduction regulations.

Where can I find more information about the LOF and the MMAP?

Information regarding the LOF and the MMAP, including: Registration procedures and forms; current and past LOFs; descriptions of each Category I and II fishery; and some Category III fisheries; observer requirements; and marine mammal mortality/injury reporting forms and submittal procedures; may be obtained at: *http://www.nmfs.noaa.gov/pr/interactions/fisheries/lof.html,* or from any NMFS Regional Office at the addresses listed below:

NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Allison Rosner;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Jessica Powell;

NMFS, West Coast Region, Seattle Office, 7600 Sand Point Way NE., Seattle, WA 98115, Attn: Elizabeth Petras, Protected Resources Division;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Aleria Jensen; or

NMFS, Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, Attn: Dawn Golden.

Sources of Information Reviewed for the 2017 LOF

NMFS reviewed the marine mammal incidental mortality and serious injury information presented in the SARs for all fisheries to determine whether changes in fishery classification are warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of mortality and serious injury of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports through the MMAP, reports to the SRGs, conference papers, FMPs, and ESA documents.

The LOF for 2017 was based on, among other things, stranding data; fisher self-reports; and SARs, primarily the 2015 SARs, which are based on data from 2009–2013. The final SARs referenced in this LOF include: 2014 (80 FR 50599, August 20, 2015) and 2015 (81 FR 38676, June 14, 2016). The SARs are available at: *http://www.nmfs.noaa.gov/pr/sars/.*

Summary of Changes to the LOF for 2017

The following summarizes the proposed changes to the LOF for 2017, including the classification of fisheries, fisheries listed, the estimated number of vessels/persons in a particular fishery, and the species and/or stocks that are incidentally killed or injured in a particular fishery. NMFS proposes two re-classifications of fisheries provided in the LOF for 2017. Additionally, NMFS proposes adding one fishery to the LOF. NMFS proposes changes to the estimated number of vessels/persons and list of species and/or stocks killed or injured in certain fisheries. The classifications and definitions of U.S. commercial fisheries for 2017 are identical to those provided in the LOF for 2016 with the proposed changes discussed below. State and regional abbreviations used in the following paragraphs include: AK (Alaska), BSAI (Bering Sea and Aleutian Islands), CA (California), DE (Delaware), FL (Florida), GMX (Gulf of Mexico), HI (Hawaii), MA (Massachusetts), ME (Maine), NC (North Carolina), NY (New York), OR (Oregon), RI (Rhode Island), SC (South Carolina), VA (Virginia), WA (Washington), and WNA (Western North Atlantic).

Commercial Fisheries in the Pacific Ocean

Classification of Fisheries

NMFS proposes to reclassify the AK miscellaneous finfish handline/hand troll and mechanical jig fishery from Category III to Category II. Category II classification is driven by take of the Western North Pacific stock of humpback whales (see proposed addition of this stock to list of stocks incidentally injured or killed below). Based on the most recent five years of available information, mortality and serious injury of the Western North Pacific stock of humpback whales by this fishery is 6.89% of the PBR of 2.9 (Allen and Angliss, 2016). Mortality and serious injury levels greater than 1% and less than 50% of PBR meet the Category II threshold. Therefore, NMFS proposes to reclassify the AK miscellaneous finfish handline/hand troll and mechanical jig fishery as a Category II fishery.

NMFS proposes to elevate the CA spiny lobster fishery from Category III to Category II. Category II classification for this fishery is driven by takes of the CA/OR/WA offshore stock of bottlenose dolphin. Based on the average annual fishery-related mortality and serious injury of the CA/OR/WA offshore stock of bottlenose dolphin by this fishery is 3.6% of the PBR of 5.5 (Carretta *et al.,* 2014). Therefore, NMFS proposes to reclassify the CA spiny lobster fishery as a Category II fishery. NMFS evaluated the 2008 bottlenose dolphin, CA/OR/WA offshore stock, entanglement during the proposed 2010 LOF process. At that time, the entanglement was characterized as a non-serious injury in the NMFS stranding database, as the animal had been disentangled, and the incident was not included in the 2010 SAR (Carretta *et al.*, 2011). Following NMFS' 2012 policy on distinguishing serious from non-serious injury, the bottlenose dolphin entanglement was determined to be a serious injury and was included in the 2013 SAR (NMFS, 2012).

Number of Vessels/Persons

NMFS proposes updates to the estimated number of vessels/persons in the Pacific Ocean (Table 1) as follows:

Category	Fishery	Number of vessels/persons (2016 LOF)	Number of vessels/persons (2017 LOF)
I	HI deep-set longline	135	139
II	HI shallow-set longline	15	20
II	American Samoa longline	22	20
III	American Samoa bottomfish handline	17	24

List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean

NMFS proposes to add the Hawaii stock of pygmy killer whale and to remove the Hawaii pelagic stock of pantropical spotted dolphin on the list of stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery. A pygmy killer whale was observed dead in this fishery in 2013. No pantropical spotted dolphin mortalities or injuries have been documented in the most recent five years of data. Annual average estimated pygmy killer whale mortality and serious injury from the Hawaii deep-set longline fishery during 2009 to 2013 was 1.1. During the same time frame mortality and serious injury was 0 for pantropcial spotted dolphin (McCracken, 2015). Observer coverage for this fishery from 2009 to 2013 was 20.6, 21.1, 20.3, 20.4, and 20.4 percent, respectively.

NMFS proposes to add the Hawaii stock of rough-toothed dolphin and to remove the Hawaii stock of *Kogia spp.* on the list of stocks killed or injured in the Category II Hawaii shallow-set longline fishery. A rough-toothed dolphin was observed dead in this fishery in 2013. Annual average estimated rough-toothed dolphin mortality and serious injury from the Hawaii shallow-set longline fishery during 2009 to 2013 was 0.2. For the same time frame mortality and serious injury was 0 for *Kogia spp.* (McCracken, 2015). Observer coverage for this fishery from 2009 to 2013 was 100 percent each year.

NMFS proposes to add the Western North Pacific and Central North Pacific stocks of humpback whale and the Northeast Pacific stock of fin whale to the list of stocks killed or injured in the AK miscellaneous finfish handline/hand troll and mechanical jig fishery. The stranding network documented a humpback whale mortality in 2013 that was assigned to both stocks based on spatial overlap. We also propose to add a “1” to the Western North Pacific stock to indicate it is driving the classification of this fishery. In 2012, the stranding network documented a fin whale mortality. There is no observer coverage in this fishery.

NMFS proposes to add the CA/OR/WA stock of short-finned pilot whale to the list of stocks incidentally killed or injured in the CA thresher shark/swordfish drift gillnet (≥14 in mesh) fishery. Two short-finned pilot whales were observed dead in this fishery in 2014 (Carretta *et al.*, 2016). Observer coverage for this fishery from 2010 to 2014 was 11.9, 19.5, 18.6, 37.4, and 23.7 percent, respectively.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Addition of Fisheries

NMFS propose to add the Northeast and Mid-Atlantic fyke net fishery to the list of Category III fisheries. Fyke nets are defined as a series of wood or metal hoops covered with netting. These nets are 2.5–5.0 m (8.2–16.4 ft) long. There are usually two wings of netting at the entrance that are attached to upright stakes and give the overall net a “Y-shape.” There are one or more funnels inside the net that direct fish to the rear of the net (the “car”) where they become trapped. Occasionally, a long leader is used to direct fish to the entrance. Fish are removed by lifting the car out of the water and loosening a rope securing the rear of the car (Stevenson *et al.*, 2004).

These nets are generally fished in shallow water, targeting estuarine and coastal species including but not limited to glass eels (elvers), winter flounder, menhaden, croaker, bluefish, river herring, Atlantic croaker, and weakfish (Fullencamp, 2006). These nets are utilized from Maine through Virginia. They are typically set in contact with the bottom, in areas with strong currents (FAO, 2001). Fyke nets are managed by state regulations, and fishing activity is not managed under a federal FMP. There have been no documented interactions between fyke nets and marine mammals; and, given the primarily estuarine nature of these fisheries, we expect a remote likelihood of or no mortalities or serious injuries to occur.

Number of Vessels/Persons

NMFS proposes updates to the estimated number of vessels/persons in the Atlantic Ocean, Gulf of Mexico, and Caribbean (Table 2) as follows:

Category	Fishery	Number of vessels/persons (2016 LOF)	Number of vessels/persons (2017 LOF)
I	Mid-Atlantic Gillnet	4063	3950
II	Atlantic Mixed Species Trap/Pot	3284	3436
II	Chesapeake Bay Inshore Gillnet	272	248
II	Mid-Atlantic Bottom Trawl	994	785
II	Northeast Drift Gillnet	1567	1036
II	VA Pound Net	47	26
II	Northeast Bottom Trawl	3132	2238

Category	Fishery	Number of vessels/persons (2016 LOF)	Number of vessels/persons (2017 LOF)
II	Mid-Atlantic Haul Beach Seine	243	359
II	Mid-Atlantic Midwater Trawl	507	382
II	Northeast Anchored Gillnet	995	852
II	Gulf of Mexico Gillnet	724	248
II	NC Inshore Gillnet	1323	2850
II	Southeast Atlantic Gillnet	357	273
II	Southeastern U.S. Atlantic, Gulf of Mexico Stone Crab Trap/Pot	1282	1384
II	Atlantic Blue Crab Trap/Pot	8557	7714
II	NC Long Haul Seine	372	30
II	NC Roe Mullet Stop Net	13	1

List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean

NMFS proposes to remove the Western North Atlantic stock of harbor seal from the list of species incidentally killed or injured in the Category I Northeast/Mid-Atlantic American lobster trap/pot fishery. Harbor seals were originally listed as a species killed or injured by this fishery in the 1996 LOF (60 FR 31666; June 16, 1995); however, there have been no documented takes in this fishery within the last five years. Takes of seals in the lobster fishery have not been listed as a source of annual human-caused mortality since the 2005 stock assessment report (Waring *et al.,* 2005). In the 2005 stock assessment reports and prior stock assessment reports going back to 1995, takes were estimated to occur twice a year in mid-coastal Maine fisheries (Gilbert and Wynne, 1985).

NMFS proposes to remove Risso's dolphin, Western North Atlantic stock, and add the Western North Atlantic stocks of harbor seal and gray seal to the list of species incidentally killed or injured in the Category II Mid-Atlantic Midwater trawl fishery. The last Risso's dolphin take in this fishery was documented in 2008, and no interactions have been documented since (Waring *et al.,* 2015). Risso's dolphins were originally added as a species incidentally killed or injured in the Mid-Atlantic midwater trawl fishery in the 1996 LOF (60 FR 31666; June 16, 1995), which later became the Atlantic squid, mackerel, butterfish trawl fishery (62 FR 28657; May 27, 1997) until the 2005 LOF when the name was again changed to Mid-Atlantic midwater trawl fishery (69 FR 70094; December 2, 2004).

One harbor seal and one gray seal were both observed killed in this fishery in 2010. An expanded bycatch estimate has not been generated for either species. Until the bycatch estimates can be developed, the average annual fishery-related mortality and serious injury for 2009–2013 for both species is calculated at 0.2 animals (1 animal/5 years). Observer coverage for this fishery from 2009–2013 was 25, 41, 21, 7, and 5 percent, respectively.

NMFS proposes to add the Canadian East coast stock of minke whale to the list of species incidentally killed or injured in the Category II Northeast midwater trawl fishery. During July 2013, one minke whale was observed dead in a midwater otter trawl on Georges Bank. Due to the small sample size of observed takes, an expanded estimate has not been calculated. Annual average estimated minke whale mortality and serious injury from the Northeast midwater trawl fishery (including pair trawl) during 2009 to 2013 was 0.2. Observer coverage from 2009–2013 was 53, 41, 45, 37, and 42 percent, respectively.

NMFS proposes to remove the Canadian East coast stock of minke whale from the list of species incidentally killed or injured in the Category II Northeast bottom trawl fishery. Minke whales were added as a species incidentally killed or injured in this fishery in the 2013 LOF (78 FR 23708; April 22, 2013) due to observed takes occurring in 2004 and 2008; however, there have been no observed takes of minke whales in this fishery since 2008 (Waring *et al.,* 2016). Observer coverage from 2009–2013 was 16, 26, 17, 15 and 17 percent, respectively.

NMFS proposes to remove the Western North Atlantic stock of short-finned pilot whale from the list of species incidentally killed or injured in the Category II Northeast sink gillnet fishery. Short-finned pilot whales were originally listed as a species killed or injured in this fishery in the 2013 LOF (78 FR 23708; April 22, 2013) due to an unknown pilot whale species take recorded in 2010 (Waring *et al.,* 2012). According to the 2015 Stock Assessment Report, pilot whale mortalities are generally observed north of 40° N. latitude in this fishery and, therefore, should be attributed to the long-finned pilot whale stock (Waring *et al.,* 2016). Observer coverage for this fishery for 2009–2013 was 17, 19, 15, 11 and 18 percent, respectively.

NMFS proposes to remove the following stocks from the list of species incidentally killed or injured in the Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery: Western North Atlantic stock of Atlantic spotted dolphin, Gulf of Mexico stock of Gervais beaked whale, Gulf of Mexico oceanic stock of killer whale, Western North Atlantic stock of Pantropical spotted dolphin, and Gulf of Mexico oceanic stock of sperm whale. There have been no observed mortalities or injuries to these species in the most recent five years of data (Waring *et al.,* 2016). Observer coverage in this fishery in the most recent five year period (2009–2013) has been 10, 8, 9, 7, and 9 percent, respectively.

NMFS proposes to add unknown stock (likely Northern migratory coastal or Southern migratory coastal) of bottlenose dolphin to the list of stocks incidentally killed or injured in the Category II Chesapeake Bay inshore gillnet fishery based on a 2013 mortality in 9-inch (22.9 cm) stretched mesh gillnet gear (Waring *et al.,* 2016).

NMFS proposes to add the Mississippi Sound, Lake Borgne, Bay Boudreau stock of bottlenose dolphin to the list of stocks incidentally killed or injured in the Category II Gulf of Mexico menhaden purse seine fishery based on a 2011 observed injury and two-self reported mortalities in 2012 (Waring *et al.,* 2016).

NMFS proposes to add the Florida Keys stock of bottlenose dolphin to the list of stocks incidentally killed or injured in the Category III Florida spiny lobster trap/pot fishery based on the location and gear description in a 2013 stranding report (Waring *et al.,* 2016).

NMFS proposes to add the Barataria Bay stock and the Mississippi Sound, Lake Borgne, Bay Boudreau stock of bottlenose dolphin to the list of stocks incidentally killed or injured in the

Category III Gulf of Mexico blue crab trap/pot fishery based on documented mortalities in 2011 (Waring *et al.*, 2016). A Barataria Bay stock animal was also disentangled and released alive in 2012.

Commercial Fisheries on the High Seas

Number of Vessels/Persons

NMFS proposes updates to the estimated number of vessels/persons on the High Seas (Table 3) as follows:

Category	Fishery	Number of vessels/persons (2016 LOF)	Number of vessels/persons (2017 LOF)
I	Western Pacific pelagic longline (HI deep-set component)	135	139
II	Atlantic highly migratory species drift gillnet	1	0
II	South Pacific tuna purse seine	39	38
II	South Pacific albacore troll longline	15	10
II	South Pacific tuna longline	8	2
II	Western Pacific pelagic longline (HI shallow-set component)	15	20
II	Pacific highly migratory species handline/pole and line	50	46
II	South Pacific albacore troll handline/pole and line	9	7
II	Western Pacific pelagic handline/pole and line	5	2
II	South Pacific albacore troll troll	38	30
II	South Pacific tuna troll	5	4
II	Western Pacific pelagic troll	21	17
III	Pacific highly migratory species longline	126	114
III	Pacific highly migratory species purse seine	8	6
III	Pacific highly migratory species troll	243	187

List of Species and/or Stocks Incidentally Killed or Injured on the High Seas

NMFS proposes to add the Hawaii stock of pygmy killer whale and to remove the Hawaii pelagic stock of pantropical spotted dolphin on the list of stocks incidentally killed or injured in the Category I Western Pacific pelagic longline (HI deep-set component) fishery to be consistent with proposed changes to Table 1 because this fishery is a component of an existing fishery operating within U.S. waters.

NMFS proposes to add the Hawaii stock of rough-toothed dolphin and to remove the Hawaii stock of *Kogia spp.* on the list of stocks killed or injured in the Category II Western Pacific pelagic longline (HI shallow-set component) fishery to be consistent with proposed changes to Table 1 because this fishery is a component of an existing fishery operating within U.S. waters.

NMFS proposes to add the CA breeding stock of northern elephant seal to the list of stocks killed or injured in the Category II Western Pacific pelagic longline (HI shallow-set component) fishery based on a 2013 observed serious injury. Annual average estimated northern elephant seal mortality and serious injury from the fishery during 2009 to 2013 was 0.2 (McCracken, 2015).

List of Fisheries

The following tables set forth the list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska), Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean, Table 3 lists commercial fisheries on the high seas, and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels or persons participating in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels or persons in the fishery. NMFS acknowledges that, in some cases, these estimates may be inflations of actual effort. For example, the State of Hawaii does not issue fishery-specific licenses, and the number of participants reported in the LOF represents the number of commercial marine license holders who reported using a particular fishing gear type/method at least once in a given year, without considering how many times the gear was used. For these fisheries, effort by a single participant is counted the same whether the fisher used the gear only once or every day. In the Mid-Atlantic and New England fisheries, the numbers represent the potential effort for each fishery, given the multiple gear types for which several state permits may allow. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates, as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Tables 1 and 2 serve to provide a description of the fishery's potential effort (state and Federal). If NMFS is able to extract more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, contact the relevant regional office (contact information included above in **SUPPLEMENTARY INFORMATION**).

For high seas fisheries, Table 3 lists the number of valid HSFCA permits currently held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time. As noted previously in this rule, the number of HSFCA permits listed in Table 3 for the high seas components of fisheries that also operate within U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

Tables 1, 2, and 3 also list the marine mammal species and/or stocks incidentally killed or injured (seriously or non-seriously) in each fishery based on SARs, injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fisher self-reports (*i.e.,* MMPA reports), and anecdotal reports. The best available scientific information included in these reports is based on data through 2012. This list includes all species and/or stocks known to be killed or injured in a given fishery but also includes species and/or stocks for which there are anecdotal records of a mortality or injury. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.,* MMPA reports) may not be verified. In Tables 1 and 2, NMFS has designated those species/stocks driving a fishery's classification (*i.e.,* the fishery is classified based on mortalities and serious injuries of a marine mammal stock that are greater than or equal to 50 percent [Category I], or greater than 1 percent and less than 50 percent [Category II], of a stock's PBR) by a "1" after the stock's name.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented mortalities or serious injuries of marine mammals, or fisheries that did not result in a mortality or serious injury rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of a "Category II fishery" in 50 CFR 229.2 (*i.e.,* fishing techniques, gear types, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by a "2" after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the exclusive economic zone (EEZ) boundary and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately between Table 1 or 2 and Table 3, are considered the same fisheries on either side of the EEZ boundary. NMFS has designated those fisheries in each table by a "*" after the fishery's name.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
	CATEGORY I	
LONGLINE/SET LINE FISHERIES:		
HI deep-set longline *^	139	Bottlenose dolphin, HI Pelagic. False killer whale, MHI Insular.[1] False killer whale, HI Pelagic.[1] False killer whale, NWHI. Pygmy killer whale, HI. Risso's dolphin, HI. Short-finned pilot whale, HI. Sperm whale, HI. Striped dolphin, HI.
GILLNET FISHERIES:		
CA thresher shark/swordfish drift gillnet (≥14 in mesh) *	18	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Humpback whale, CA/OR/WA. Long-beaked common dolphin, CA. Minke whale, CA/OR/WA. Northern elephant seal, CA breeding. Northern right-whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA. Short-finned pilot whale, CA/OR/WA. Sperm Whale, CA/OR/WA.[1]
	CATEGORY II	
GILLNET FISHERIES:		
CA halibut/white seabass and other species set gillnet (≤3.5 in mesh).	50	California sea lion, U.S. Harbor seal, CA. Humpback whale, CA/OR/WA.[1] Long-beaked common dolphin, CA. Northern elephant seal, CA breeding. Sea otter, CA. Short-beaked common dolphin, CA/OR/WA.
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in)[2].	30	California sea lion, U.S. Long-beaked common dolphin, CA. Short-beaked common dolphin, CA/OR/WA.
AK Bristol Bay salmon drift gillnet[2]	1,862	Beluga whale, Bristol Bay. Gray whale, Eastern North Pacific. Harbor seal, Bering Sea. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, North Pacific. Spotted seal, AK. Steller sea lion, Western U.S.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
AK Bristol Bay salmon set gillnet[2]	979	Beluga whale, Bristol Bay. Gray whale, Eastern North Pacific. Harbor seal, Bering Sea. Northern fur seal, Eastern Pacific. Spotted seal, AK.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA.[1] Harbor seal, GOA. Sea otter, Southwest AK. Steller sea lion, Western U.S.
AK Cook Inlet salmon set gillnet	736	Beluga whale, Cook Inlet. Dall's porpoise, AK. Harbor porpoise, GOA. Harbor seal, GOA. Humpback whale, Central North Pacific.[1] Sea otter, South central AK. Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	569	Beluga whale, Cook Inlet. Dall's porpoise, AK. Harbor porpoise, GOA.[1] Harbor seal, GOA. Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet[2]	162	Dall's porpoise, AK. Harbor porpoise, GOA. Harbor seal, GOA. Northern fur seal, Eastern Pacific.
AK Peninsula/Aleutian Islands salmon set gillnet[2]	113	Harbor porpoise, Bering Sea. Northern sea otter, Southwest AK. Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK. Harbor porpoise, GOA.[1] Harbor seal, GOA. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, North Pacific. Sea otter, South central AK. Steller sea lion, Western U.S.[1]
AK Southeast salmon drift gillnet	474	Dall's porpoise, AK. Harbor porpoise, Southeast AK. Harbor seal, Southeast AK. Humpback whale, Central North Pacific.[1] Pacific white-sided dolphin, North Pacific. Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet[2]	168	Gray whale, Eastern North Pacific. Harbor Porpoise, Southeastern AK. Harbor seal, Southeast AK. Humpback whale, Central North Pacific (Southeast AK).
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of U.S.-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded).	210	Dall's porpoise, CA/OR/WA. Harbor porpoise, inland WA[1] Harbor seal, WA inland.
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands flatfish trawl	32	Bearded seal, AK. Gray whale, Eastern North Pacific. Harbor porpoise, Bering Sea. Harbor seal, Bering Sea. Humpback whale, Western North Pacific.[1] Killer whale, AK resident.[1] Killer whale, GOA, AI, BS transient.[1] Northern fur seal, Eastern Pacific. Ringed seal, AK. Ribbon seal, AK. Spotted seal, AK. Steller sea lion, Western U.S.[1] Walrus, AK.
AK Bering Sea, Aleutian Islands pollock trawl	102	Bearded Seal, AK. Dall's porpoise, AK. Harbor seal, AK. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific. Northern fur seal, Eastern Pacific. Ribbon seal, AK. Ringed seal, AK.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
		Spotted seal, AK. Steller sea lion, Western U.S.[1]
AK Bering Sea, Aleutian Islands rockfish trawl	17	Killer whale, ENP AK resident.[1] Killer whale, GOA, AI, BS transient.[1]
POT, RING NET, AND TRAP FISHERIES:		
CA spot prawn pot	25	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1]
CA Dungeness crab pot	570	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1]
OR Dungeness crab pot	433	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1]
WA/OR/CA sablefish pot	309	Humpback whale, CA/OR/WA.[1]
WA coastal Dungeness crab pot	228	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1]
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Pacific cod longline	45	Dall's Porpoise, AK. Killer whale, GOA, BSAI transient.[1] Northern fur seal, Eastern Pacific. Ringed seal, AK.
HI shallow-set longline *^	20	Blainville's beaked whale, HI. Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic.[1] Humpback whale, Central North Pacific. Risso's dolphin, HI. Rough-toothed dolphin, HI. Short-finned pilot whale, HI. Striped dolphin, HI.
American Samoa longline[2]	22	Bottlenose dolphin, unknown. Cuvier's beaked whale, unknown. False killer whale, American Samoa. Rough-toothed dolphin, American Samoa. Short-finned pilot whale, unknown.
HI shortline[2]	9	None documented.
HOOK-AND-LINE, HANDLINE, AND JIG FISHERIES:		
AK miscellaneous finfish handline/hand troll and mechanical jig.	456	Fin whale, Northeast Pacific. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific.[1]
	CATEGORY III	
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,778	Harbor porpoise, Bering Sea.
AK miscellaneous finfish set gillnet	54	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	29	Harbor seal, GOA. Sea otter, South central AK. Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	920	None documented.
CA set gillnet (mesh size <3.5 in)	296	None documented.
HI inshore gillnet	36	Bottlenose dolphin, HI. Spinner dolphin, HI.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast.
WA/OR Mainstem Columbia River eulchon gillnet	15	None documented.
WA/OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast.
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast. Northern elephant seal, CA breeding.
MISCELLANEOUS NET FISHERIES:		
AK Cook Inlet salmon purse seine	83	Humpback whale, Central North Pacific.
AK Kodiak salmon purse seine	376	Humpback whale, Central North Pacific.
AK Southeast salmon purse seine	315	None documented in the most recent five years of data.
AK Metlakatla salmon purse seine	10	None documented.
AK miscellaneous finfish beach seine	2	None documented.
AK miscellaneous finfish purse seine	2	None documented.
AK octopus/squid purse seine	0	None documented.
AK roe herring and food/bait herring beach seine	10	None documented.
AK roe herring and food/bait herring purse seine	356	None documented.
AK salmon beach seine	31	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
AK salmon purse seine (excluding salmon purse seine fisheries listed elsewhere).	936	Harbor seal, GOA. Harbor seal, Prince William Sound.
WA/OR sardine purse seine	42	None documented.
CA anchovy, mackerel, sardine purse seine	65	California sea lion, U.S. Harbor seal, CA.
CA squid purse seine	80	Long-beaked common dolphin, CA. Short-beaked common dolphin, CA/OR/WA.
CA tuna purse seine *	10	None documented.
WA/OR Lower Columbia River salmon seine	10	None documented.
WA/OR herring, smelt, squid purse seine or lampara	130	None documented.
WA salmon purse seine	75	None documented.
WA salmon reef net	11	None documented.
HI lift net	17	None documented.
HI inshore purse seine	<3	None documented.
HI throw net, cast net	23	None documented.
HI seine net	24	None documented.
DIP NET FISHERIES:		
CA squid dip net	115	None documented.
MARINE AQUACULTURE FISHERIES:		
CA marine shellfish aquaculture	unknown	None documented.
CA salmon enhancement rearing pen	>1	None documented.
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented.
WA salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters.
WA/OR shellfish aquaculture	23	None documented.
TROLL FISHERIES:		
WA/OR/CA albacore surface hook and line/troll	705	None documented.
CA halibut hook and line/handline	unknown	None documented.
CA white seabass hook and line/handline	unknown	None documented.
AK salmon troll	1,908	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	13	None documented.
CA/OR/WA salmon troll	4,300	None documented.
HI troll	2,117	Pantropical spotted dolphin, HI.
HI rod and reel	322	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	40	None documented.
Guam tuna troll	432	None documented.
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands rockfish longline	3	None documented.
AK Bering Sea, Aleutian Islands Greenland turbot longline	4	Killer whale, AK resident.
AK Bering Sea, Aleutian Islands sablefish longline	22	None documented.
AK Gulf of Alaska halibut longline	855	None documented.
AK Gulf of Alaska Pacific cod longline	92	Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish longline	25	None documented.
AK Gulf of Alaska sablefish longline	295	Sperm whale, North Pacific.
AK halibut longline/set line (state and Federal waters)	2,197	None documented in the most recent five years of data.
AK octopus/squid longline	3	None documented.
AK state-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish).	464	None documented.
WA/OR/CA groundfish, bottomfish longline/set line	367	Bottlenose dolphin, CA/OR/WA offshore.
WA/OR Pacific halibut longline	350	None documented.
CA pelagic longline	1	None documented in the most recent five years of data.
HI kaka line	15	None documented.
HI vertical line	3	None documented.
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	13	Ribbon seal, AK. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	72	Ringed seal, AK. Steller sea lion, Western U.S.
AK Gulf of Alaska flatfish trawl	36	Northern elephant seal, North Pacific.
AK Gulf of Alaska Pacific cod trawl	55	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	67	Dall's porpoise, AK. Fin whale, Northeast Pacific. Northern elephant seal, North Pacific. Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	43	None documented.
AK food/bait herring trawl	4	None documented.
AK miscellaneous finfish otter/beam trawl	282	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet).	38	None documented.
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl.	2	None documented.
CA halibut bottom trawl	47	California sea lion, U.S. Harbor porpoise, unknown. Harbor seal, unknown. Northern elephant seal, CA breeding. Steller sea lion, unknown.
CA sea cucumber trawl	16	None documented.
WA/OR/CA shrimp trawl	300	None documented.
WA/OR/CA groundfish trawl	160–180	California sea lion, U.S. Dall's porpoise, CA/OR/WA. Harbor seal, OR/WA coast. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, CA/OR/WA. Steller sea lion, Eastern U.S.
POT, RING NET, AND TRAP FISHERIES:		
AK statewide miscellaneous finfish pot	4	None documented.
AK Aleutian Islands sablefish pot	4	None documented.
AK Bering Sea, Aleutian Islands Pacific cod pot	59	None documented.
AK Bering Sea, Aleutian Islands crab pot	540	Gray whale, Eastern North Pacific.
AK Bering Sea sablefish pot	2	None documented.
AK Gulf of Alaska crab pot	381	None documented.
AK Gulf of Alaska Pacific cod pot	128	Harbor seal, GOA.
AK Southeast Alaska crab pot	41	Humpback whale, Central North Pacific (Southeast AK).
AK Southeast Alaska shrimp pot	269	Humpback whale, Central North Pacific (Southeast AK).
AK shrimp pot, except Southeast	236	None documented.
AK octopus/squid pot	26	None documented.
AK snail pot	1	None documented.
CA/OR coonstripe shrimp pot	36	Gray whale, Eastern North Pacific. Harbor seal, CA.
CA rock crab pot	124	Gray whale, Eastern North Pacific. Harbor seal, CA.
CA spiny lobster	194	Bottlenose dolphin, CA/OR/WA offshore. Humpback whale, CA/OR/WA. Gray whale, Eastern North Pacific.
WA/OR/CA hagfish pot	54	None documented.
WA/OR shrimp pot/trap	254	None documented.
WA Puget Sound Dungeness crab pot/trap	249	None documented.
HI crab trap	5	Humpback whale, Central North Pacific.
HI fish trap	9	None documented.
HI lobster trap	<3	None documented in recent years.
HI shrimp trap	10	None documented.
HI crab net	4	None documented.
HI Kona crab loop net	33	None documented.
HOOK-AND-LINE, HANDLINE, AND JIG FISHERIES:		
AK North Pacific halibut handline/hand troll and mechanical jig	180	None documented.
AK octopus/squid handline	7	None documented.
American Samoa bottomfish	17	None documented.
Commonwealth of the Northern Mariana Islands bottomfish	28	None documented.
Guam bottomfish	>300	None documented.
HI aku boat, pole, and line	<3	None documented.
HI bottomfish handline	578	None documented in recent years.
HI inshore handline	357	None documented.
HI pelagic handline	534	None documented.
WA groundfish, bottomfish jig	679	None documented.
Western Pacific squid jig	0	None documented.
HARPOON FISHERIES:		
CA swordfish harpoon	6	None documented.
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	409	None documented.
AK Southeast herring roe/food/bait pound net	2	None documented.
HI bullpen trap	3	None documented.
BAIT PENS:		
WA/OR/CA bait pens	13	California sea lion, U.S.
DREDGE FISHERIES:		
Alaska scallop dredge	108 (5 AK)	None documented.
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	0	None documented.

Table 1—List of Fisheries—Commercial Fisheries in the Pacific Ocean—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
AK clam	130	None documented.
AK Dungeness crab	2	None documented.
AK herring spawn on kelp	339	None documented.
AK urchin and other fish/shellfish	398	None documented.
HI black coral diving	<3	None documented.
HI fish pond	5	None documented.
HI handpick	46	None documented.
HI lobster diving	19	None documented.
HI spearfishing	163	None documented.
WA/CA kelp	4	None documented.
WA/OR bait shrimp, clam hand, dive, or mechanical collection	201	None documented.
OR/CA sea urchin, sea cucumber hand, dive, or mechanical collection.	10	None documented.
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (2,702 AK).	Killer whale, unknown. Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
LIVE FINFISH/SHELLFISH FISHERIES:		
CA nearshore finfish live trap/hook-and-line	93	None documented.
HI aquarium collecting	90	None documented.

List of Abbreviations and Symbols Used in Table 1: AI—Aleutian Islands; AK—Alaska; BS—Bering Sea; CA—California; ENP—Eastern North Pacific; GOA—Gulf of Alaska; HI—Hawaii; MHI—Main Hawaiian Islands; OR—Oregon; WA—Washington; [1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3; ∧ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of species and/or stocks killed or injured in high seas component of the fishery, minus species and/or stocks that have geographic ranges exclusively on the high seas. The species and/or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

Table 2—List of Fisheries—Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
CATEGORY I		
GILLNET FISHERIES:		
Mid-Atlantic gillnet	3,950	Bottlenose dolphin, Northern Migratory coastal.[1] Bottlenose dolphin, Southern Migratory coastal.[1] Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Southern NC estuarine system.[1] Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Gray seal, WNA. Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. Risso's dolphin, WNA. White-sided dolphin, WNA.
Northeast sink gillnet	4,332	Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Fin whale, WNA. Gray seal, WNA. Harbor porpoise, GME/BF.[1] Harbor seal, WNA. Harp seal, WNA. Hooded seal, WNA. Humpback whale, Gulf of Maine. Long-finned pilot whale, WNA. Minke whale, Canadian east coast. North Atlantic right whale, WNA. Risso's dolphin, WNA. White-sided dolphin, WNA.
TRAP/POT FISHERIES:		

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Northeast/Mid-Atlantic American lobster trap/pot	10,163	Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. North Atlantic right whale, WNA.[1]
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.*	420	Atlantic spotted dolphin, GMX continental and oceanic. Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Cuvier's beaked whale, WNA. False killer whale, WNA. Harbor porpoise, GME, BF. Kogia *spp.* (Pygmy or dwarf sperm whale), WNA. Long-finned pilot whale, WNA.[1] Mesoplodon beaked whale, WNA. Minke whale, Canadian East coast. Pantropical spotted dolphin, Northern GMX. Pygmy sperm whale, GMX. Risso's dolphin, Northern GMX. Risso's dolphin, WNA. Short-finned pilot whale, Northern GMX. Short-finned pilot whale, WNA.[1]
	CATEGORY II	
GILLNET FISHERIES:		
Chesapeake Bay inshore gillnet[2]	248	Bottlenose dolphin, unknown (Northern migratory coastal or Southern migratory coastal).
Gulf of Mexico gillnet[2]	248	Bottlenose dolphin, GMX bay, sound, and estuarine. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Western GMX coastal.
NC inshore gillnet	2,850	Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Southern NC estuarine system.[1]
Northeast anchored float gillnet[2]	852	Harbor seal, WNA. Humpback whale, Gulf of Maine. White-sided dolphin, WNA.
Northeast drift gillnet[2]	1,036	None documented.
Southeast Atlantic gillnet[2]	273	Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Northern FL coastal. Bottlenose dolphin, SC/GA coastal. Bottlenose dolphin, Southern migratory coastal.
Southeastern U.S. Atlantic shark gillnet	30	Bottlenose dolphin, unknown (Central FL, Northern FL, SC/GA coastal, or Southern migratory coastal). North Atlantic right whale, WNA.
TRAWL FISHERIES:		
Mid-Atlantic mid-water trawl (including pair trawl)	382	Gray seal, WNA. Harbor seal, WNA. White-sided dolphin, WNA.[1]
Mid-Atlantic bottom trawl	785	Bottlenose dolphin, WNA offshore. Common dolphin, WNA.[1] Gray seal, WNA. Harbor seal, WNA. Risso's dolphin, WNA.[1]
Northeast mid-water trawl (including pair trawl)	1,087	Common dolphin, WNA. Gray seal, WNA. Harbor seal, WNA. Long-finned pilot whale, WNA.[1] Minke whale, Canadian East Coast.
Northeast bottom trawl	2,238	Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Gray seal, WNA. Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Long-finned pilot whale, WNA. Risso's dolphin, WNA. White-sided dolphin, WNA.[1]
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	4,950	Atlantic spotted dolphin, GMX continental and oceanic. Bottlenose dolphin, Charleston estuarine system. Bottlenose dolphin, Eastern GMX coastal.[1]

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
		Bottlenose dolphin, GMX bay, sound, estuarine.[1] Bottlenose dolphin, GMX continental shelf. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, SC/GA coastal.[1] Bottlenose dolphin, Southern migratory coastal. Bottlenose dolphin, Western GMX coastal.[1] West Indian manatee, Florida.
TRAP/POT FISHERIES:		
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot[2].	1,384	Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay. Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion). Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Northern GMX coastal.
Atlantic mixed species trap/pot[2]	3,436	Fin whale, WNA. Humpback whale, Gulf of Maine.
Atlantic blue crab trap/pot	7,714	Bottlenose dolphin, Central FL coastal.[1] Bottlenose dolphin, Central GA estuarine system. Bottlenose dolphin, Charleston estuarine system.[1] Bottlenose dolphin, Indian River Lagoon estuarine system.[1] Bottlenose dolphin, Jacksonville estuarine system.[1] Bottlenose dolphin, Northern FL coastal.[1] Bottlenose dolphin, Northern GA/Southern SC estuarine system.[1] Bottlenose dolphin, Northern Migratory coastal.[1] Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Northern SC estuarine system. Bottlenose dolphin, SC/GA coastal.[1] Bottlenose dolphin, Southern GA estuarine system [1] Bottlenose dolphin, Southern Migratory coastal.[1] Bottlenose dolphin, Southern NC estuarine system.[1] West Indian manatee, FL.[1]
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Northern GMX coastal.[1] Bottlenose dolphin, Western GMX coastal.[1]
Mid-Atlantic menhaden purse seine[2]	19	Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Southern Migratory coastal.
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	359	Bottlenose dolphin, Northern Migratory coastal.[1] Bottlenose dolphin, Northern NC estuarine system[1]. Bottlenose dolphin, Southern Migratory coastal.[1]
NC long haul seine	30	Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Southern NC estuarine system.
STOP NET FISHERIES:		
NC roe mullet stop net	1	Bottlenose dolphin, Northern NC estuarine system. Bottlenose dolphin, unknown (Southern migratory coastal or Southern NC estuarine system).
POUND NET FISHERIES:		
VA pound net	26	Bottlenose dolphin, Northern migratory coastal. Bottlenose dolphin, Northern NC estuarine system. Bottlenose dolphin, Southern Migratory coastal.[1]
	CATEGORY III	
GILLNET FISHERIES:		
Caribbean gillnet	>991	None documented in the most recent five years of data.
DE River inshore gillnet	unknown	None documented in the most recent five years of data.
Long Island Sound inshore gillnet	unknown	None documented in the most recent five years of data.
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet.	unknown	None documented in the most recent five years of data.
Southeast Atlantic inshore gillnet	unknown	Bottlenose dolphin, Northern SC estuarine system.
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	>58	None documented.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, Northern GMX continental shelf.
Gulf of Mexico mixed species trawl	20	None documented.
GA cannonball jellyfish trawl	1	Bottlenose dolphin, SC/GA coastal.
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA.
Shellfish aquaculture	unknown	None documented.
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	>7	Harbor seal, WNA. Gray seal, WNA.
Gulf of Maine menhaden purse seine	>2	None documented.
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal.
U.S. Atlantic tuna purse seine *	5	Long-finned pilot whale, WNA. Short-finned pilot whale, WNA.
LONGLINE/HOOK-AND-LINE FISHERIES:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	>1,207A	None documented.
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.	428	Bottlenose dolphin, WNA offshore. Humpback whale, Gulf of Maine.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	Bottlenose dolphin, GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	<125	Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, Northern GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	1,446	None documented.
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented.
TRAP/POT FISHERIES:		
Caribbean mixed species trap/pot	>501	None documented.
Caribbean spiny lobster trap/pot	>197	None documented.
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay estuarine. Bottlenose dolphin, FL Keys.
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Barataria Bay. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Western GMX coastal. West Indian manatee, FL.
Gulf of Mexico mixed species trap/pot	unknown	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot.	10	None documented.
U.S. Mid-Atlantic eel trap/pot	unknown	None documented.
STOP SEINE/WEIR/POUND NET/FLOATING TRAP/FYKE NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	>1	Harbor porpoise, GME/BF. Harbor seal, WNA. Minke whale, Canadian east coast. Atlantic white-sided dolphin, WNA.
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented.
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net).	unknown	Bottlenose dolphin, Northern NC estuarine system.
RI floating trap	9	None documented.
Northeast and Mid-Atlantic fyke net	unknown	None documented.
DREDGE FISHERIES:		
Gulf of Maine sea urchin dredge	unknown	None documented.
Gulf of Maine mussel dredge	unknown	None documented.
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	>403	None documented.
Mid-Atlantic blue crab dredge	unknown	None documented.
Mid-Atlantic soft-shell clam dredge	unknown	None documented.
Mid-Atlantic whelk dredge	unknown	None documented.
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented.
New England and Mid-Atlantic offshore surf clam/quahog dredge.	unknown	None documented.
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	None documented in the most recent five years of data.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Gulf of Mexico haul/beach seine	unknown	None documented.
Southeastern U.S. Atlantic haul/beach seine	25	None documented.
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
Gulf of Maine urchin dive, hand/mechanical collection	unknown	None documented.
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented.
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Choctawhatchee Bay. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay. Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Northern FL coastal. Bottlenose dolphin, Northern GA/Southern SC estuarine. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Northern migratory coastal. Bottlenose dolphin, Northern NC estuarine. Bottlenose dolphin, Southern migratory coastal. Bottlenose dolphin, Southern NC estuarine system. Bottlenose dolphin, Southern SC/GA coastal. Bottlenose dolphin, Western GMX coastal.

List of Abbreviations and Symbols Used in Table 2: DE—Delaware; FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; MA—Massachusetts; NC—North Carolina; NY—New York; RI—Rhode Island; SC—South Carolina; VA—Virginia; WNA—Western North Atlantic; [1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
	Category I	
LONGLINE FISHERIES:		
Atlantic Highly Migratory Species *	86	Atlantic spotted dolphin, WNA. Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Cuvier's beaked whale, WNA. False killer whale, WNA. Killer whale, GMX oceanic. Kogia *spp.* whale (Pygmy or dwarf sperm whale), WNA. Long-finned pilot whale, WNA. Mesoplodon beaked whale, WNA. Minke whale, Canadian East coast. Pantropical spotted dolphin, WNA. Risso's dolphin, GMX. Risso's dolphin, WNA. Short-finned pilot whale, WNA.
Western Pacific Pelagic (HI Deep-set component) *^	139	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. Pygmy killer whale, HI. Risso's dolphin, HI. Short-finned pilot whale, HI. Sperm whale, HI. Striped dolphin, HI.
DRIFT GILLNET FISHERIES:		
Pacific Highly Migratory Species ^	5	Long-beaked common dolphin, CA. Humpback whale, CA/OR/WA. Northern right-whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
		Short-beaked common dolphin, CA/OR/WA.
	Category II	
DRIFT GILLNET FISHERIES:		
Atlantic Highly Migratory Species	0	Undetermined.
TRAWL FISHERIES:		
Atlantic Highly Migratory Species **	1	Undetermined.
CCAMLR	0	Antarctic fur seal.
PURSE SEINE FISHERIES:		
South Pacific Tuna Fisheries	38	Undetermined.
Western Pacific Pelagic	3	Undetermined.
LONGLINE FISHERIES:		
CCAMLR	0	None documented.
South Pacific Albacore Troll	10	Undetermined.
South Pacific Tuna Fisheries **	2	Undetermined.
Western Pacific Pelagic (HI Shallow-set component) * ^	20	Blainville's beaked whale, HI. Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. Humpback whale, Central North Pacific. Northern elephant seal, CA breeding. Risso's dolphin, HI. Rough-toothed dolphin, HI. Short-beaked common dolphin, CA/OR/WA. Short-finned pilot whale, HI. Striped dolphin, HI.
HANDLINE/POLE AND LINE FISHERIES:		
Atlantic Highly Migratory Species	3	Undetermined.
Pacific Highly Migratory Species	46	Undetermined.
South Pacific Albacore Troll	7	Undetermined.
Western Pacific Pelagic	2	Undetermined.
TROLL FISHERIES:		
Atlantic Highly Migratory Species	2	Undetermined.
South Pacific Albacore Troll	30	Undetermined.
South Pacific Tuna Fisheries **	4	Undetermined.
Western Pacific Pelagic	17	Undetermined.
	Category III	
LONGLINE FISHERIES:		
Northwest Atlantic Bottom Longline	1	None documented.
Pacific Highly Migratory Species * ^	114	None documented in the most recent 5 years of data.
PURSE SEINE FISHERIES:		
Pacific Highly Migratory Species * ^	6	None documented.
TRAWL FISHERIES:		
Northwest Atlantic	1	None documented.
TROLL FISHERIES:		
Pacific Highly Migratory Species *	187	None documented.

List of Terms, Abbreviations, and Symbols Used in Table 3:

CA—California; GMX—Gulf of Mexico; HI—Hawaii; OR—Oregon; WA—Washington; WNA—Western North Atlantic.

* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.

** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.

^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species and/or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS

Take reduction plans	Affected fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP)—50 CFR 229.32.	*Category I:* Mid-Atlantic gillnet. Northeast/Mid-Atlantic American lobster trap/pot. Northeast sink gillnet. *Category II:*

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS—Continued

Take reduction plans	Affected fisheries
	Atlantic blue crab trap/pot. Atlantic mixed species trap/pot. Northeast anchored float gillnet. Northeast drift gillnet. Southeast Atlantic gillnet. Southeastern U.S. Atlantic shark gillnet *. Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.^
Bottlenose Dolphin Take Reduction Plan (BDTRP)—50 CFR 229.35.	*Category I:* Mid-Atlantic gillnet. *Category II:* Atlantic blue crab trap/pot. Chesapeake Bay inshore gillnet fishery. Mid-Atlantic haul/beach seine. Mid-Atlantic menhaden purse seine. NC inshore gillnet. NC long haul seine. NC roe mullet stop net. Southeast Atlantic gillnet. Southeastern U.S. Atlantic shark gillnet. Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl^. Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot^. VA pound net.
False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37.	*Category I:* HI deep-set longline. *Category II:* HI shallow-set longline.
Harbor Porpoise Take Reduction Plan (HPTRP)—50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic).	*Category I:* Mid-Atlantic gillnet. Northeast sink gillnet.
Pelagic Longline Take Reduction Plan (PLTRP)—50 CFR 229.36.	*Category I:* Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.
Pacific Offshore Cetacean Take Reduction Plan (POCTRP)—50 CFR 229.31.	*Category I:* CA thresher shark/swordfish drift gillnet (≥14 in mesh).
Atlantic Trawl Gear Take Reduction Team (ATGTRT).	*Category II:* Mid-Atlantic bottom trawl. Mid-Atlantic mid-water trawl (including pair trawl). Northeast bottom trawl. Northeast mid-water trawl (including pair trawl).

* Only applicable to the portion of the fishery operating in U.S. waters;
^ Only applicable to the portion of the fishery operating in the Atlantic Ocean.

Classification

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule would not have a significant economic impact on a substantial number of small entities. On June 12, 2014, the SBA issued a final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33647). The rule increased the size standard for Finfish Fishing from $19.0 to $20.5 million, Shellfish Fishing from $5.0 to $5.5 million, and Other Marine Fishing from $7.0 to $7.5 million. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities; thus, they all would continue to be considered small under the new standards.

Under existing regulations, all individuals participating in Category I or II fisheries must register under the MMPA and obtain an Authorization Certificate. The Authorization Certificate authorizes the taking of non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Additionally, individuals may be subject to a TRP and requested to carry an observer. NMFS has estimated that up to approximately 58,500 fishing vessels, most with annual revenues below the SBA's small entity thresholds, may operate in Category I or II fisheries. As fishing vessels operating in Category I or II fisheries, they are required to register with NMFS. Forty-five fishing vessels are new to Category II as a result of this proposed rule. The MMPA registration process is integrated with existing state and Federal licensing, permitting, and registration programs. Therefore, individuals who have a state or Federal fishing permit or landing license, or who are authorized through another related state or Federal fishery registration program, are currently not required to register separately under the MMPA or pay the $25 registration fee. Therefore, this proposed rule would not impose any direct costs on small entities. Record keeping and reporting costs associated with this rulemaking are minimal and would not have a significant impact on a substantial number of small entities.

If a vessel is requested to carry an observer, vessels will not incur any direct economic costs associated with carrying that observer. In addition, section 118 of the MMPA states that an observer is not required to be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and has not been prepared. In the event that reclassification of a fishery to Category I or II results in a TRP, economic analyses of the effects of that TRP would be summarized in subsequent rulemaking actions.

This proposed rule contains collection-of-information (COI) requirements subject to the Paperwork Reduction Act. The COI for the registration of individuals under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants). The requirement for reporting marine mammal mortalities or injuries has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the COI. Send comments regarding these reporting burden estimates or any other aspect of the COI, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a COI subject to the requirements of the Paperwork Reduction Act unless that COI displays a currently valid OMB control number.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the NEPA in 1995 and 2005. The 1995 EA examined the effects of regulations implementing section 118 of the 1994 Amendments of the MMPA on the affected environment. The 2005 EA analyzed the environmental impacts of continuing the existing scheme (as described in the 1995 EA) for classifying fisheries on the LOF. The 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. NMFS reviewed the 2005 EA in 2009. NMFS concluded that because there were no changes to the process used to develop the LOF and implement section 118 of the MMPA, there was no need to update the 2005 EA. This rule would not change NMFS's current process for classifying fisheries on the LOF; therefore, this rule is not expected to change the analysis or conclusion of the 2005 EA and Finding of No Significant Impact (FONSI), and no update is needed. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an environmental document, as required under NEPA, specific to that action.

This proposed rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would consult under ESA section 7 on that action.

This proposed rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

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Dated: August 9, 2016.

Paul Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2016–19346 Filed 8–12–16; 8:45 am]

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Notices

Federal Register
Vol. 81, No. 157
Monday, August 15, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE
[8/5/2016 through 8/9/2016]

Firm name	Firm address	Date accepted for investigation	Product(s)
Omaha Steel Castings Company, LLC.	912 East 12th Street, Wahoo, NE 68066.	8/8/2016	The firm custom designs and manufactures industrial related alloy and carbon steel components.
Little Lady Foods, Inc	2323 Pratt Boulevard, Elk Grove Village, IL 60007.	8/9/2016	The firm creates custom food products and baked goods.
On Plan Solutions, LLC	10000 NE. 7th Avenue, Suite 300i, Vancouver, WA 98685.	8/9/2016	On Plan Solutions is a consulting service for Oracle applications.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,
Lead Program Analyst.

[FR Doc. 2016–19288 Filed 8–12–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–112–2016]

Foreign-Trade Zone 92—Gulfport, Mississippi; Application for Expansion of Subzone 92B; Huntington Ingalls Industries; Pascagoula, Mississippi

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Mississippi Coast Foreign Trade Zone, Inc., grantee of FTZ 92, requesting an expansion of Subzone 92B on behalf of Huntington Ingalls Industries. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on August 9, 2016.

Subzone 92B was approved on January 17, 1991 (Board Order 506, 56 FR 2740, January 24, 1991) and consists of one site (794 acres) located on the east and west banks of the East Pascagoula River in the City of Pascagoula, some 3 miles south of the US Highway 90 bridge and 12 miles from the Gulf of Mexico. The applicant is requesting authority to expand the subzone to include an additional site: *Proposed Site 2* (12.18 acres)—3800 Richard Street in Pascagoula. The existing subzone and the proposed site would be subject to the existing activation limit of FTZ 92. No additional authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is September 26, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 11, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: August 9, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–19412 Filed 8–12–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 12, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on drawn stainless steel sinks from the People's Republic of China. We invited interested parties to comment but received no comments or requests for a hearing. Therefore, the final results remain unchanged from the preliminary results.

DATES: Effective August 15, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brandon Custard, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766, or (202) 482–1823, respectively.

SUPPLEMENTARY INFORMATION: On May 12, 2016, the Department published the *Preliminary Results.*[1] The POR is April 1, 2014, through March 31, 2015. We invited interested parties to comment on the *Preliminary Results.* We received no comments or requests for a hearing. The Department conducted this administrative review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the order include drawn stainless steel sinks. Imports of subject merchandise are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 7324.10.000 and 7324.10.0010. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise within the scope is dispositive.[2]

Final Results of Review and Final Determination of No Shipments

As noted above, the Department received no comments concerning the *Preliminary Results* on the record of this segment of the proceeding. As there are no changes from, or comments upon, the *Preliminary Results,* the Department finds that there is no reason to modify its analysis. Thus, we continue to find that sales of subject merchandise by Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan) were made at less than normal value (NV) during the POR. We also continue to grant separate rates to Feidong Import and Export Co., Ltd. and Ningbo Afa Kitchen and Bath Co., Ltd. Further, we continue to find that B&R Industries Limited, Zhongshan Newecan Enterprise Development Corporation, and Zhongshan Superte Kitchenware Co., Ltd./Superte invoiced as Foshan Zhaoshun Trade Co., Ltd., Shunde Foodstuffs J&C Industries Enterprise Limited, Foshan Shunde MingHao Kitchen Utensils Co., Ltd., Franke Asia Sourcing Ltd., Grand Hill Work Company, Hangzhou Heng's Industries Co., Ltd., Jiangmen Hongmao Trading Co;, Ltd., Jiangxi Zoje Kitchen & Bath Industry Co., Ltd., Ningbo Oulin Kitchen Utensils Co., Ltd. and Shunde Foodstuffs Import & Export Company Limited of Guangdong are part of the PRC-wide entity and will receive the rate of that entity. Finally, we continue to find that Kehuaxing Industrial Ltd. (Kehuaxing) made no shipments of subject merchandise during the POR. Accordingly, no decision memorandum accompanies this **Federal Register** notice. For further details of the issues addressed in this segment of the proceeding, *see* the *Preliminary Results* and the accompanying Preliminary Decision Memorandum. The final weighted-average dumping margins for the period April 1, 2014, through March 31, 2015 are as follows:

Producer/exporter	Weighted-average dumping margin (percent)
Guangdong Dongyuan Kitchenware Industrial Co., Ltd	1.65
Ningbo Afa Kitchen and Bath Co., Ltd *	1.65
Feidong Import and Export Co., Ltd *	1.65

* These companies demonstrated that they qualified for a separate rate in this administrative review. As we did in the *Preliminary Results,* and consistent with the Department's practice, we continue to assign them the rate calculated for the mandatory respondent in this review.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b), the Department determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

For Dongyuan, which has a weighted-average dumping margin which is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we calculated importer- (or customer-) specific per-unit duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's (or customer's) examined sales to the total sales quantity associated with those sales, in accordance with 19 CFR 351.212(b)(1). Where an importer- (or customer-) specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the respondents which were not selected for individual examination in this administrative review and which qualified for a separate rate, the assessment rate is equal to the weighted-average dumping margin assigned to Dongyuan, or 1.65 percent.

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[1] *See Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015,* 81 FR 29528 (May 12, 2016) (*Preliminary Results*).

[2] For a complete description of the scope of the order, *see* the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, "Decision Memorandum for the Preliminary Results of the 2014–2015 Administrative Review: Drawn Stainless Steel Sinks from the People's Republic of China," (Preliminary Decision Memorandum), dated May 5, 2016, which can be accessed directly at *http://enforcement.trade.gov/frn/.*

For the companies identified above as part of the PRC-wide entity, we will instruct CBP to apply an *ad valorem* assessment rate of 76.45[3] percent to all entries of subject merchandise during the POR which were produced and/or exported by those companies.

The Department has refined its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by Dongyuan, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, because the Department determined that Kehuaxing had no shipments of the subject merchandise, any suspended entries that entered under Kehuaxing's rate will be liquidated at the PRC-wide rate.[4]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is zero or *de minimis,* then a cash deposit rate of zero will be established for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, which is 76.45 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 5, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–19264 Filed 8–12–16; 8:45 am]

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[3] The PRC-wide rate determined in the investigation was 76.53 percent. *See Drawn Stainless Steel Sinks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 21592, 21594 (April 11, 2013). This rate was adjusted for export subsidies and estimated domestic subsidy pass through to determine the cash deposit rate (76.45 percent) collected for companies in the PRC-wide entity. *See* explanation in *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination,* 78 FR 13019, 13025 (February 26, 2013).

[4] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*NME Antidumping Proceedings*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–820, A–588–843, A–580–829, A–469–807, A–583–828]

Stainless Steel Wire Rod from Italy, Japan, the Republic of Korea, Spain, and Taiwan: Continuation and Revocation of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping (AD) duty orders on stainless steel wire rod (SSWR) from Japan, the Republic of Korea (Korea), and Taiwan would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty orders. In addition, as a result of the ITC's determination that revocation of the AD duty orders on SSWR from Italy and Spain is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department is revoking the AD orders on SSWR from Italy and Spain.

DATES: AD Revocation (Italy and Spain): Effective June 17, 2015; AD Continuation (Japan, Korea, and Taiwan): Effective August 15, 2016.

FOR FURTHER INFORMATION CONTACT: David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3693.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1998, the Department published the AD orders on SSWR from Japan, Italy, Korea, Spain, and Taiwan.[1] On May 1, 2015, the Department initiated[2] and the ITC instituted[3] five-year ("sunset") reviews of the AD orders on SSWR from Japan, Italy, Korea, Spain, and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, the Department determined that revocation of the AD orders on SSWR from Japan, Italy, Korea, Spain, and Taiwan would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins of dumping likely to prevail were the orders revoked.[4]

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[1] *See Notice of Antidumping Duty Order: Stainless Steel Wire Rod from Italy,* 63 FR 49327 (September 15, 1998); *Notice of Antidumping Duty Order: Stainless Steel Wire Rod from Japan,* 63 FR 49328 (September 15, 1998); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod from Korea,* 63 FR 49331 (September 15, 1998), as amended by *Stainless Steel Wire Rod From Korea: Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision,* 66 FR 41550 (August 8, 2001); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod from Spain,* 63 FR 49330 (September 15, 1998); and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod from Taiwan,* 63 FR 49332 (September 15, 1998).

[2] *See Initiation of Five-Year ("Sunset") Review,* 80 FR 24900 (May 1, 2015).

[3] *See Stainless Steel Wire Rod From Italy, Japan, Korea, Spain, and Taiwan; Institution of Five-Year Reviews,* 80 FR 24970 (May 1, 2015).

On July 29, 2016, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the AD orders on SSWR from Japan, Korea, and Taiwan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, but that revocation of the AD orders on SSWR from Italy and Spain would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[5]

Scope of the Orders

The merchandise covered by these orders is SSWR, which comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the orders. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max
Chromium	19.00/21.00
Manganese	2.00 max
Molybdenum	1.50/2.50
Phosphorous	0.05 max
Lead	added (0.10/0.30)
Sulfur	0.15 max
Tellurium	added (0.03 min)
Silicon	1.00 max

K–M35FL

Carbon	0.015 max
Nickel	0.30 max
Silicon	0.70/1.00
Chromium	12.50/14.00
Manganese	0.40 max
Lead	0.10/0.30
Phosphorous	0.04 max
Aluminum	0.20/0.35
Sulfur	0.03 max

The products subject to these orders are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Continuation of the AD Orders on SSWR From Japan, Korea, and Taiwan

As a result of the determinations by the Department and the ITC that revocation of the AD orders on SSWR from Japan, Korea, and Taiwan would likely lead to a continuation or a recurrence of dumping and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD orders on SSWR from Japan, Korea, and Taiwan. U.S. Customs and Border Protection (CBP) will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Revocation of the AD Orders on SSWR From Italy and Spain

As a result of the determination by the ITC that revocation of the AD orders on SSWR from Italy and Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department is revoking the AD orders on SSWR from Italy and Spain. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is June 17, 2015 (*i.e.*, the fifth anniversary of the date of publication in the **Federal Register** of the notice of continuation of the antidumping duty orders).[6]

Cash Deposits and Assessment of Duties on SSWR From Italy and Spain

The Department will notify CBP, 15 days after publication of this notice, to terminate the suspension of liquidation and to discontinue the collection of cash deposits on entries of SSWR from Italy and Spain, entered or withdrawn from warehouse, on or after June 17, 2015. The Department will further instruct CBP to refund with interest all cash deposits on unliquidated entries made on or after June 17, 2015. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and AD deposit requirements and assessments. The Department will complete any pending or requested administrative reviews of this order covering entries prior to June 17, 2015.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

These five-year (sunset) reviews and notice are in accordance with sections 751(c) and (d)(2), and 777(i) the Act, and 19 CFR 351.218(f)(4).

Dated: August 5, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–19256 Filed 8–12–16; 8:45 am]

BILLING CODE 3510–DS–P

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[4] *See Stainless Steel Wire Rod from Italy, Japan, the Republic of Korea, Spain, and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 80 FR 59733 (October 2, 2015).

[5] *See Stainless Steel Wire Rod from Italy, Japan, Korea, Spain, and Taiwan; Determination*, 81 FR 50011 (July 29, 2016).

[6] *See Stainless Steel Wire Rod from Italy, Japan, the Republic of Korea, Spain, and Taiwan: Continuation of Antidumping Duty Orders*, 75 FR at 34424 (June 17, 2010).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–985]

Xanthan Gum From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Preliminary Partial Rescission of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on xanthan gum from the People's Republic of China ("PRC"). The period of review ("POR") is July 1, 2014, through June 30, 2015. The Department preliminarily: Found that mandatory respondent Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd./Xinjiang Fufeng Biotechnologies Co., Ltd. ("Fufeng") did not make sales of subject merchandise in the United States at prices below normal value ("NV") during the POR; applied total adverse facts available to A.H.A. International Co., Ltd. and Deosen Biochemical Ltd./Deosen Biochemical (Ordos) Ltd. ("Deosen"); granted separate rates to CP Kelco (Shandong) Biological Company Limited and Shanghai Smart Chemicals Co., Ltd.; included Hebei Xinhe Biochemical Co., Ltd. as part of the PRC-wide entity; and determined that three companies, Meihua Group International Trading (Hong Kong) Limited; Langfang Meihua Bio-Technology Co., Ltd.; and Xinjiang Meihua Amino Acid Co., Ltd., had no reviewable U.S. sales during the POR. Additionally, the Department is preliminarily rescinding this administrative review with respect to Inner Mongolia Jianlong Biochemical Co., Ltd ("Inner Mongolia Jianlong"). If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

DATES: Effective August 15, 2016.

FOR FURTHER INFORMATION CONTACT: Erin Kearney or Andrew Martinez, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0167 or (202) 482–3627, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this administrative review on September 2, 2015.[1] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum hereby adopted by this notice.[2]

Scope of the Order

The scope of the order covers dry xanthan gum, whether or not coated or blended with other products. Further, xanthan gum is included in this order regardless of physical form, including, but not limited to, solutions, slurries, dry powders of any particle size, or unground fiber. Merchandise covered by the scope of this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3913.90.20. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope is dispositive.[3]

Tolling of Deadline of Preliminary Results of Review

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days.[4] As a result, the revised deadline for the preliminary results of this review was April 7, 2016. On April 4, 2016, the Department extended the deadline for the preliminary results to August 5, 2016.

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the "Act"). The Department calculated export prices and constructed export prices, as appropriate, in accordance with section 772 of the Act. Given that the PRC is a non-market economy ("NME") country, within the meaning of section 771(18) of the Act, the Department calculated NV in accordance with section 773(c) of the Act.

For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice.[5] The Preliminary Decision Memorandum is a public document and is made available to the public *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination of No Shipments

Based on an analysis of CBP information and timely certifications of no shipments during the POR, the Department preliminarily determines that Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Bio-Technology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd. had no shipments and, therefore, no reviewable transactions during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Consistent with our practice in NME cases, the Department is not rescinding this administrative review for these companies, but intends to complete the review and issue appropriate instructions to CBP based on the final results of the review.[6]

Preliminary Partial Rescission of Antidumping Duty Administrative Review

Inner Mongolia Jianlong's one sale during the POR is subject to both an ongoing new shipper review and this administrative review. The Department preliminarily rescinded the new shipper review based on a finding that the sale was not a *bona fide* sale.[7] Because the sale subject to this administrative review is the same sale preliminarily found to be a non-*bona fide* sale in the new shipper review, and there are no other reviewable sales by Inner Mongolia Jianlong during the POR, we are preliminarily rescinding this review with respect to Inner Mongolia Jianlong. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 53106 (September 2, 2015) ("*Initiation Notice*").

[2] *See* "Decision Memorandum for the Preliminary Results of the Second Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China," ("Preliminary Decision Memorandum"), dated concurrently with this notice.

[3] For a complete description of the scope of the order, *see* Preliminary Decision Memorandum.

[4] See Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas" (January 27, 2016).

[5] A list of topics discussed in the Preliminary Decision Memorandum is provided in the Appendix to this notice.

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) and the "Assessment Rates" section, below.

Preliminary Results of Review

Based on record evidence, the Department preliminarily continues to treat Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. as a single entity for AD purposes. Furthermore, based on record evidence, the Department preliminarily finds that Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.), Shandong Fufeng Fermentation Co. Ltd., and Xinjiang Fufeng Biotechnologies Co., Ltd. are affiliated and should be treated as a single entity for AD purposes. For additional information, *see* the Preliminary Decision Memorandum.

In addition to the mandatory respondents, we preliminarily determine that CP Kelco (Shandong) Biological Company Limited and Shanghai Smart Chemicals Co., Ltd. also demonstrated their eligibility for a separate rate in this administrative review. Consistent with the Department's practice, we preliminarily assigned these companies a rate equal to the simple average of the weighted-average dumping margins assigned to the mandatory respondents in this review.[8]

Because Hebei Xinhe Biochemical Co. Ltd. did not submit a separate rate application or separate rate certification, or make a claim that it had no exports, sales, or entries of subject merchandise during the POR by the deadline established in the *Initiation Notice,* we preliminarily find that it failed to establish its entitlement to a separate rate and that it, therefore, remains a part of the PRC-wide entity.[9] The rate previously established for the PRC-wide entity is 154.07 percent. This rate is not under review.[10]

Finally, we preliminarily determined that Deosen and A.H.A. International Co., Ltd. did not cooperate to the best of their ability in this administrative review, and as a result, we have based their dumping margins on adverse facts available for these preliminary results.[11]

The Department preliminarily determines that the following weighted-average dumping margins exist for the POR:

Exporter	Weighted-average dumping margin (percent)
Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd./Xinjiang Fufeng Biotechnologies Co., Ltd	0.00
Deosen Biochemical Ltd./Deosen Biochemical (Ordos) Ltd	154.07
A.H.A. International Co., Ltd	154.07
CP Kelco (Shandong) Biological Company Limited	77.04
Shanghai Smart Chemicals Co., Ltd	77.04

Disclosure and Public Comment

The Department intends to disclose to parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[12] Rebuttals to case briefs may be filed no later than five days after case briefs are filed, and all rebuttal comments must be limited to comments raised in the case briefs.[13]

Any interested party may request a hearing within 30 days of publication of this notice.[14] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[15]

Unless otherwise extended, the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in the case briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[16] The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of the final results of this review.

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[7] *See* Memorandum to the File, "Inner Mongolia Jianlong Biochemical Co., Ltd.'s New Shipper Review Analysis," dated concurrently with this notice.

[8] *See* Preliminary Decision Memorandum. Because only two weighted-average dumping margins were assigned to the individually examined respondents for these preliminary results, using a weighted average of these two rates risks disclosure of business proprietary information. Therefore we calculated a simple average of the rates assigned to Fufeng and Deosen.

[9] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 51548, 51549 (August 29, 2014) ("All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification. . .").

[10] *See* Preliminary Decision Memorandum. Pursuant to the Department's change in practice, the Department no longer considers the NME entity as an exporter conditionally subject to administrative reviews. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013). Under this practice, the NME entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the entity, the entity is not under review and the entity's rate is not subject to change.

[11] *See* Preliminary Decision Memorandum.

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d).

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310(d).

[16] *See* 19 CFR 351.212(b)(1).

For each individually examined respondent in this review whose calculated weighted-average dumping margin in the final results of review is above *de minimis* (*i.e.*, greater than or equal to 0.5 percent), the Department intends to calculate importer- (or customer) specific assessment rates, in accordance with 19 CFR 351.212(b)(1).[17] Where the respondent reported reliable entered values, the Department intends to calculate importer- (or customer) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to the importer (or customer) and dividing this amount by the total entered value of the sales to the importer (or customer).[18] Where the Department calculates an importer- (or customer) specific weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to the importer (or customer) by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer- (or customer) specific assessment rates based on the resulting per-unit rates.[19] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate is above *de minimis*. Where either the respondent's weighted average dumping margin is zero or *de minimis*, or an importer (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[20] For entries that were not reported in the U.S. sales database submitted by a company individually examined during this review, and any suspended entries that entered under an exporter's case number however the Department determined that the exporter had no shipments of subject merchandise, the Department will instruct CBP to liquidate such entries at the PRC-wide rate.[21]

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is zero or *de minimis*, then the cash deposit rate of zero will be established for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, which is 154.07 percent; and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: August 5, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Selection of Respondents
5. Preliminary Determination of No Shipments
6. Preliminary Partial Rescission of Antidumping Duty Administrative Review
7. Application of Adverse Facts Available and Selection of Adverse Facts Available Rate
8. Single Entity Treatment
9. Discussion of Methodology
    a. Non-Market Economy Country
    b. Separate Rates
    c. Surrogate Country
    d. Date of Sale
    e. Comparisons to Normal Value
    f. U.S. Price
    g. Normal Value
    h. Currency Conversion
10. Recommendation

[FR Doc. 2016–19410 Filed 8–12–16; 8:45 am]

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[17] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) ("*Final Modification*").

[18] *See* 19 CFR 351.212(b)(1).

[19] *Id.*

[20] *See Final Modification* at 8103.

[21] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE788

Endangered Species; File No. 20339

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the NMFS Southeast Fisheries Center (SEFSC), 75 Virginia Beach Drive, Miami, FL 33149 [Responsible Party: Bonnie Ponwith], has applied in due form for a permit to take loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), olive ridley (*Lepidochelys olivacea*) and unidentified sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before September 14, 2016.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 20339 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Arturo Herrera or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The SEFSC requests a five-year permit to study sea turtles in the Atlantic Ocean, Gulf of Mexico and Caribbean Sea. Animals for study would be directly captured by trawl or obtained as legal bycatch from a commercial fishery. The purpose of this project is to assist in the development and testing of gear aboard commercial fishing vessels to mitigate interactions and capture of sea turtles. Researchers would be authorized to measure, weigh, apply a temporary carapace mark, flipper and Passive Integrated Transponder tagging, tissue sample, and photograph/video live sea turtles before release and to salvage carcasses and parts from dead sea turtles. Up to 253 loggerhead, 117 Kemp's ridley, 116 leatherback, 62 green, 41 hawksbill, 41 olive ridley and 85 unidentified sea turtles would be sampled annually.

Dated: August 9, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–19271 Filed 8–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Logbook Family of Forms.

OMB Control Number: 0648–0016.

Form Number(s): None.

Type of Request: Regular (extension of a current information collection).

Number of Respondents: 3,634.

Average Hours per Response: Annual fixed-cost reports, 30 minutes; Colombian fishery logbooks, 18 minutes; discard logbooks, 15 minutes; headboat, golden crab, reef fish-mackerel, economic cost/trip, wreckfish, and shrimp logbooks, 10 minutes; no-fishing responses for golden crab, reef fish-mackerel, charterboat, wreckfish and Colombian fisheries, 2 minutes.

Burden Hours: 17,038.

Needs and Uses: This request is for extension of a current information collection.

Participants in most Federally-managed fisheries in the Southeast Region are currently required to keep and submit catch and effort logbooks from their fishing trips. A subset of these vessels also provide information on the species and quantities of fish, shellfish, marine turtles, and marine mammals that are caught and discarded or have interacted with the vessel's fishing gear. A subset of these vessels also provide information about dockside prices, trip operating costs, and annual fixed costs.

The data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations. Interaction reports are needed for fishery management planning and to help protect endangered species and marine mammals. Price and cost data will be used in analyses of the economic effects of proposed regulations.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Annually and per fishing trip.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: August 9, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–19289 Filed 8–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE800

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR Data Best Practices Standing Panel webinar.

SUMMARY: The SEDAR Data Best Practices Panel will develop, review, and evaluate best practice recommendations for SEDAR Data Workshops. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR Data Best Practices Standing Panel webinar will be held on Thursday, September 1, 2016, from 10 a.m. to 12 p.m. (EST).

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405. *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The SEDAR Data Best Practices Standing Panel is charged with developing, reviewing, and evaluating best practice recommendations for SEDAR Data Workshops. The items of discussion for this webinar are as follows:

1. Finalize SEDAR Data Best Practices living document.
2. Continue discussions on Data Issue Inventory format.
3. Other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 10, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–19357 Filed 8–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Estuaries Restoration Inventory.

OMB Control Number: 0648–0479.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 15.

Average Hours per Response: Data entry of new projects, 4 hours; updates to existing projects, 2 hours.

Burden Hours: 33.

Needs and Uses: This request is for extension of a currently approved information collection.

Collection of estuary habitat restoration project information (*e.g.,* location, habitat type, goals, status, monitoring information) will be undertaken in order to populate a restoration project database mandated by the Estuary Restoration Act of 2000. The database is intended to provide information to improve restoration methods, provide the basis for required reports to Congress, and track estuary habitat acreage restored. Estuary habitat restoration project information will be submitted by habitat restoration project managers and will be accessible to the public via Internet for data queries and project reports.

Affected Public: State, local or tribal government.

Frequency: On occasion and annually.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: August 10, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–19392 Filed 8–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE481

Marine Mammals; File No. 19706

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to the California State University, Bakersfield [Responsible Party: Antje Lauer, Ph.D.], 9001 Stockdale Highway, Bakersfield, CA 93311–1022, to conduct research on pinnipeds.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Rosa González or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On March 22, 2016, notice was published in the **Federal Register** (55 FR 15248) that a request for a permit to conduct research on pinnipeds had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit authorizes the Permit Holder to (1) receive, import, and export blood sera from up to 500 California sea lions (*Zalophus californianus*), 25 threatened Guadalupe fur seals (*Arctocephalus townsendi*), and 25 northern fur seals (*Callorhinus ursinus*) in rehabilitation annually to perform immunodiffusion assays; and (2) to perform the Spherusol skin test on up to 500 California sea lions in rehabilitation annually. The objective of the permitted activities, as described in the application, is to research Coccidioidomycosis (Valley fever) on stranded marine mammals along California's coast. The goal is to successfully detect animals' exposure to *Coccidioides* spp. and compare the effectiveness of each test at detecting the fungus. The permit is valid until July 31, 2021.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 9, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–19296 Filed 8–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Springfield Supplemental Water Supply Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The United States Army Corps of Engineers (Corps) intends to prepare a Supplemental Environmental Impact Statement (SEIS) to address the proposed Springfield Supplemental Water Supply Project (previously referred to as the Proposed Water Supply Reservoir Hunter Lake) in Sangamon County, IL. The Corps, working in conjunction with the City of Springfield, Office of Public Utilities, also known as the City Water, Light & Power (City), prepared an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) of 1969 [42 U.S.C. 4321 *et. seq.*] that evaluated a range of alternatives to provide supplemental water supply to meet a projected deficit in water availability. A final EIS was prepared and published in November of 2000. The Final EIS (EIS No. 000402) was published in the **Federal Register** on November 24, 2000; however, no Record of Decision was issued.

The City has conducted an updated water demand analysis that demonstrates a sustained need for additional water supply to meet current and future demands. In accordance with Council on Environmental Quality (CEQ) regulations specified in 40 CFR 1502.9, the Corps in conjunction with the City are initiating the preparation of an EIS supplement.

DATES: Comments must be received on or before September 14, 2016.

ADDRESSES: Written comments should be sent to ATTN: Regulatory Branch, U.S. Army Corps of Engineers, Rock Island District, Clock Tower Building, P.O. Box 2004, Rock Island, IL 61204–2004. Comments also may be submitted to *cemvr-odpublicnotice@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Questions, about the proposed action or SEIS should be addressed to *cemvr-odpublicnotice@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

(1) Background

The City operates an integrated water supply, purification, transmission, and distribution system. The City's service area encompasses approximately 100 square miles with more than 52,600 service connections and a population of about 147,000. The City's current source of water is Lake Springfield that was constructed in the 1930s. The lake serves as the water source for its drinking water supply and the cooling water supply for the City's coal-fired power generating station. As a result of drought conditions in 1953–1955, the City constructed a movable low head dam across the South Fork of the Sangamon River to supplement the Lake Springfield water supply during low lake levels. On July 26, 1989, the City submitted a joint permit application for construction of Hunter Lake Reservoir to the Corps and the Illinois Environmental Protection Agency (IEPA). A Notice of Intent to prepare a Draft EIS for the construction of the Hunter Lake Reservoir was published by the Corps in the **Federal Register** on October 31, 1989. A final EIS was published in 2000 and the construction of the Hunter Lake Reservoir was identified as the preferred alternative.

On December 17, 2010, the Corps provided a letter to the City formally determining the need for a SEIS. The Corps identified areas in the SEIS where information should be updated, such as water demand analysis, threatened and endangered species bat surveys, wetland delineations, programmatic agreement related to cultural resources, water quality anti-degradation analysis, and mitigation plans.

(2) Project Need

Based on an analysis of the storage and capacity, the Illinois State Water Survey had determined that Lake Springfield is an inadequate supply system with a 50% probability of not meeting expected water supply demands. Under conditions of reduced water availability the City is at risk of not meeting demands (both existing and future) for commercial and residential water use, and for industrial water supply (power plant operation and condenser cooling). Under projected drought conditions the estimated water deficit (demand minus yield) is currently 8.2 million gallons per day (MGD), whereas future deficits (year 2065) are projected at 11.3 MGD.

Other associated regional needs have also been identified that may potentially be addressed by the City's proposed project. Specifically, the following regional needs are also recognized:

- Increased demand for regional outdoor recreational areas that provide additional fishing and hunting opportunities
- Provide supplemental water supply for adjacent communities
- Increased water supply to support regional economic development

(3) Proposed Action

The proposed Federal action is the issuance of a permit by the Corps pursuant to Section 404 of the Clean Water Act in support of the development of the selected water supply alternative. The Corps is neither a proponent nor an opponent of the City's supplemental water supply project. The City is the project proponent and will evaluate all reasonable development of a supplemental water supply for municipal, commercial, and industrial customers.

(4) Alternatives

In accordance with requirements of CEQ regulations 40 CFR 1502.14, and the provisions of Section 404(b)(1) of the Clean Water Act, the SEIS will evaluate all appropriate and reasonable alternatives to the proposed project. The SEIS will review all alternatives previously assessed in the FEIS and will include an analysis of reasonable alternatives consisting of the following:

- No Action Alternative,
- Development of a new water supply reservoir,
- Development of groundwater well systems with associated pump stations and pipelines,
- Use of other existing surface water reservoirs,
- Dredging of Lake Springfield.

Consideration of conservation measures is inherent in the City's on-going objectives to optimize the efficiency of it water supply systems and is therefore inherent in each of the alternatives under evaluation.

(5) Scoping Process

The Corps is furnishing this notice to: (1) Advise other Federal and state agencies, affected Tribes, and the public of the proposed project; (2) announce the initiation of a 30-day scoping period; and (3) obtain suggestions and information on the scope of issues and alternatives to be included in the Draft SEIS. The Corps invites comments from all interested parties to ensure the full range of issues related to the permit request is addressed and that all significant issues are identified.

The SEIS will provide updated supporting data where needed, review the purpose and need, evaluate alternatives, and assess impacts of reasonable alternatives resulting from the development of a supplemental water supply system for the city. Potentially affected resources include: Agricultural land, threatened and endangered species, wildlife, water resources, wetlands and floodplains; forested areas, transportation, recreation and potentially historic properties. Preliminary measures to minimize harm will be developed as part of this study. The public's views on the scope of the alternatives that should be addressed in the SEIS will also be considered in the preparation of the SEIS.

(6) Public Participation

A public scoping meeting will be held on August 24, 2016 from 5:00–8:00 p.m. at the State Journal-Register, 1 Copley Plaza, Springfield, IL. The public is invited to submit comments on the scope of this SEIS no later than the date identified in the **DATES** section of this notice. After the Corps prepares a draft of the SEIS, the Corps will release it for public comment. The Corps anticipates holding a public meeting in Springfield after release of the draft SEIS during the public comment period. Meeting details will be posted on the City of Springfield's Web site and published in local newspapers. The release of the Draft SEIS is anticipated for the first quarter of 2017.

Dated: August 3, 2016.

Craig S. Baumgartner

Colonel, US Army Commander & District Engineer.

[FR Doc. 2016–19353 Filed 8–12–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Grey Matter, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice; Correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** on September 17, 2014, announcing an intent to grant to Grey Matter, LLC, a revocable, nonassignable, exclusive license. The scope of the intent to license has been revised.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, email: *rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

Correction

In the **Federal Register** of September 17, 2014, make the following revision:

1. In the first and second column, on page 55764, revise the **SUMMARY** caption to read as follows:

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Grey Matter, LLC, a revocable, nonassignable, exclusive license to practice in the field of use of wearable personal protective equipment in the United States, the Government-owned inventions described in U.S. Patent No. 7,754,145 entitled "Fluorphore Embedded/Incorporating/Bridged Periodic Mesoporous Organosilicas as Recognition Photo-Decontamination Catalysts", Navy Case No. 097,346; and U.S. Patent Application No. 14/209,728 entitled "Microwave Initiation for Deposition of Porous Organosilicate Materials on Fabrics", Navy Case No. 102,325 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 30, 2016.

Dated: August 8, 2016.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–19348 Filed 8–12–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0066]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Race to the Top—Early Learning Challenge Annual Performance Report

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 14, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0066. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–349, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Deborah Spitz, 202–260–3793.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork

Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Race to the Top—Early Learning Challenge Annual Performance Report.

OMB Control Number: 1810–0713.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 11.

Total Estimated Number of Annual Burden Hours: 1,320.

Abstract: The Department of Education and the Department of Health and Human Services (Departments) are requesting renewal of the currently approved Annual Performance Report for RTT–ELC grantees, without making any material change to the collection instrument, instructions, frequency of collection or use. The information submitted in the Annual Performance Report is used to verify that grantees are making substantial progress toward the achievement of approved objectives. This grant awarded all funds up front, so the APR will not be used to determine continuation awards, but will be used to provide necessary performance information and data to program staff and to the public. Further, this APR form collects aggregate and quantifiable data needed to respond to the requirements of the Government Performance and Results Act (GPRA).

Information is collected under the authority of Sections 14005 and 14006, Division A, of the American Recovery and Reinvestment Act of 2009, as amended by section 1832(b) of Division B of Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and the Department of Education Appropriations Act, 2012 (Title III of Division F of Public Law 112–74, the Consolidated Appropriations Act, 2012).

Dated: August 9, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–19260 Filed 8–12–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Inviting Postsecondary Educational Institutions To Participate in Experiments Under the Experimental Sites Initiative; Federal Student Financial Assistance Programs Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary invites institutions of higher education (institutions) that participate in the Federal student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), to apply to participate in a new institutional experiment under the Experimental Sites Initiative (ESI).

Under the ESI, the Secretary has authority to grant waivers of certain title IV, HEA statutory or regulatory requirements to allow a limited number of institutions to participate in experiments to test alternative methods of administering the title IV, HEA programs. The alternative methods of title IV, HEA administration that the Secretary is permitting under this ESI experiment are designed to facilitate efforts by institutions to evaluate certain innovative loan counseling practices that can prepare students to manage their college finances, inform them about their student loan repayment options, and ensure students are well-prepared to repay their loans on time.

Under this experiment, participating institutions will have the flexibility to require additional loan counseling for student borrowers beyond the statutorily required one-time entrance and one-time exit counseling as a condition for the students to receive Direct Loan funds, and to customize counseling based on students' needs.

DATES: Letters of Interest to participate in the experiment described in this notice must be received by the Department no later than September 29, 2016 to ensure that the Department considers the institution for participation in the experiment. Letters received after September 29, 2016 may, at the discretion of the Secretary, be considered for participation.

ADDRESSES: Letters of Interest must be submitted by electronic mail to the following email address: *experimentalsites@ed.gov.* For format and other required information, see "Instructions for Submitting Letters of Interest" under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Warren Farr, U.S. Department of Education, Federal Student Aid, 830 First Street NE., Washington, DC 20002. Telephone: (202) 377–4380 or by email at: *Warren.Farr@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Instructions for Submitting Letters of Interest: Letters of Interest should be in an Adobe Portable Document Format (PDF) attachment to an email message sent to the email address provided in the **ADDRESSES** section of this notice. The subject line of the email should read "ESI 2016—Additional Loan Counseling." The text of the email should include the name and address of the institution. The Letter of Interest should be on institutional letterhead and be signed by the institution's financial aid administrator. The Letter of Interest must include the institution's official name and its Office of Postsecondary Education Identification (OPEID) number, and the name of a contact person at the institution, along with a mailing address, email address, FAX number, and telephone number of a person at the institution. The letter should also include the information described in the "Application and Selection" section in this notice. Upon receipt of a Letter of Interest, the Department will notify the institution by email that its Letter of Interest was received. This notification should be kept in the institution's records.

Background

Accurate and timely loan information is crucial for students to make informed decisions about borrowing and to understand their repayment obligations and options. However, there is limited research on the effectiveness of loan counseling, including which types of content and modes of delivery of loan counseling are most effective in helping students to understand and manage their debt, as well as when and how often counseling should occur to be most effective.

Since the start of his Administration, President Obama has outlined an ambitious agenda to make college more affordable for American families and promote student success. In his June 9, 2014, *Presidential Memorandum for the Secretary of Treasury and the Secretary of Education,* the President directed the agencies to focus their efforts on providing initiatives that help Federal student loan borrowers manage their debt.

In support of the President's agenda, the Secretary, under the Experimental Sites authority in section 487A(b) of the HEA, is offering institutions the opportunity to participate in the experiment described in this notice. The experiment will provide institutions the flexibility to require, as a condition for a student to receive Direct Loan funds, loan counseling that is in addition to the entrance and exit counseling currently required under statute.

Section 485(l)(1)(A) of the HEA requires that each institution ensure that first-time borrowers receive comprehensive information on the terms and conditions of the loan and of the responsibilities the borrower has with respect to the loan. This information must be provided in a simple and understandable format.

The Department's regulations at 34 CFR 685.304(a) require institutions to ensure that entrance counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to the borrower, unless the borrower has previously completed entrance counseling at that institution or at another institution, regardless of when that counseling occurred. These regulations do not allow institutions to require counseling as a condition of disbursement beyond the required first-time entrance counseling and required exit counseling, though the institution may offer such counseling to students on a voluntary basis.

The purpose of this experiment is to test the effectiveness of requiring additional loan counseling beyond the counseling that is statutorily required. The additional loan counseling is expected to help borrowers better understand their repayment options and obligations and make more informed decisions about their debt. The experiment may also identify the types of borrowers who have benefitted most from additional loan counseling. The Department hopes to learn if the additional loan counseling:

- Positively influences students' decision-making about borrowing;
- Promotes successful repayment of student loans, including reducing delinquencies and defaults; and
- Has an impact on students' academic performance (*e.g.,* grades and time-to-completion).

We also seek to learn whether different types of content and modes of delivery of loan counseling are more or less effective in promoting the above outcomes. This experiment can inform any future policy changes around loan counseling and efforts to inform borrowers about repayment plans and progress.

Details of this experiment are provided in the section titled "The Experiment" below.

The Experiment

Description

Under the experiment, an institution will require all of its eligible Direct Loan borrowers who have previously completed first-time entrance counseling to participate in the experiment (or for some large institutions, a subset of those borrowers), with approximately half of those borrowers randomly assigned by the Department to complete additional required counseling beyond the entrance counseling normally provided to first-time borrowers as a condition of receiving their Direct Loan funds.

Institutions with particularly large numbers of borrowers who would be eligible for the experiment may request to include in the experiment a subset of those borrowers each year. The size of the subset will be determined by the Department in consultation with the institution and will take into consideration the overall number of students needed to estimate impacts for groups of institutions using similar counseling models. Once the size of the subset is determined, students will be randomly selected by the Department from the larger group of borrowers to be included in the subset and to participate in the experiment, either in the treatment group or in the control group.

The Department will assign all borrowers who have been determined to be participants in the experiment to either the treatment group or to the control group. Borrowers assigned to the treatment group will be required to participate in additional loan counseling beyond the entrance counseling they completed as first-time borrowers, as a condition of receiving a Direct Loan. Borrowers assigned to the control group cannot be required to complete, but may do so voluntarily, any additional loan counseling beyond the already-completed entrance counseling and the statutorily required exit counseling.

Under the experiment, institutions cannot require additional counseling more than once for each of the student's Direct Loan loan periods (generally once for each academic year). Therefore, students who are already required to participate in entrance counseling in any year (*i.e.,* a first-time borrower at any institution) will not be included in the experiment for that year. Only students who completed their loan counseling during a prior year (whether for enrollment at the participating institution or at a different institution) will be included in the experiment for subsequent years.

If an institution participating in the experiment currently offers voluntary additional loan counseling to students, it may continue to do so during its participation in the experiment. If an institution does not provide voluntary additional loan counseling, it may not begin to do so during its participation in the experiment. To the extent possible, the Department will require institutions to provide information regarding the students in the control group who utilize the institution's voluntary additional loan counseling.

Institutional Flexibilities

An institution participating in the experiment will have flexibility in the content and modes of delivery of its additional loan counseling (*e.g.,* online, individual in-person, group in-person, student-to-student). The institution will be allowed to choose the counseling approach it will use for the required additional counseling by choosing one of the following: The Department's Financial Awareness Counseling Tool (FACT); a third-party counseling product or third-party servicer; or institutionally developed alternative counseling.

The additional required counseling provided to borrowers by participating institutions may vary based on the students' expected remaining time to complete their program. That counseling may also vary for different groups of students depending on their prior borrowing.

The institution may include, as part of its additional counseling, a test or other evaluation to assess the student's knowledge of the information presented as long as the test or evaluation is presented in a format accessible to students with disabilities, including students with visual or hearing impairments, and is in a language understandable by students with limited English proficiency. This may require the use of interpreters for oral or written communications with such students, as well as translations of written materials provided to such students. However, any such evaluation may not impede a student's ability to borrow, for example, by establishing a passing score for the test or evaluation before the student can receive Direct Loan funds.

Institutional Requirements

Institutions participating in this experiment will be required to:

- Work with the Department to establish the number of its Direct Loan borrowers who will be included as participants in the experiment.
- Track and provide data to the Department for its borrowers who were assigned by the Department to the treatment group and its borrowers who were assigned to the control group.
- Ensure that the additional counseling required of the borrowers in the treatment group is reasonable as to time and effort, and is relevant to the student's borrowing decisions; and that the additional counseling is not biased or restricted based on students' religion, national origin, race, color, sex, socioeconomic status (including income), disability, place of residence, physical location where the student will be enrolled, or educational program.
- Ensure that the additional loan counseling does not discourage students from taking on debt needed to successfully complete their studies, while not over-borrowing taking into account anticipated earnings.
- Make loan counseling reasonable and not so burdensome that it becomes a barrier to receiving Direct Loan funds.
- Ensure that for each particular year, Direct Loan borrowers already required to receive loan entrance counseling at that institution (*i.e.,* first-time borrowers) are not subject to required additional counseling for that year. These students would be eligible to participate in this experiment in subsequent years.
- Disclose to all borrowers included in the experiment (both those in the treatment group and those in the control group) that the institution is participating in an experiment related to loan counseling and that some of the students in the experiment may be required to participate in additional loan counseling as a condition of receiving Direct Loan funds.
- Inform students who have been selected to receive additional counseling that their Direct Loan disbursements are conditional upon completion of that counseling.
- Ensure that the institution's policy for providing counseling under the experiment remains consistent throughout the institution's participation in the experiment. A participating institution is also expected to ensure that its delivery of counseling does not change significantly during the institution's participation in the experiment.

The Department will perform ongoing monitoring during the experiment to ensure that participating institutions meet these requirements throughout their participation in the experiment.

All counseling provided to borrowers must deliver information that, at a minimum, includes the total amount of the borrowers' student loan indebtedness. The institution may customize the counseling based on the borrower's needs. However, the Department encourages participating institutions to include in its additional counseling the following information, where relevant, to assist students in making more informed borrowing decisions:

- Comprehensive information on the terms and conditions of Federal student loans, including information about annual and aggregate limits, interest rates, how interest accrues, loan fees for Federal student loans, and the responsibilities the borrower has with respect to such loans.
- A reminder that students will be required to repay their loans even if they do not complete the academic program.
- Information that indicates that completing an academic program will increase the students' ability to successfully repay their loans.
- Information about the requirement to complete additional counseling and to complete exit counseling upon leaving the institution.
- A statement that, when determining whether and how much to borrow, students should consider how much they can reasonably expect to earn after leaving their academic program of study. As part of this statement, the institution may provide other relevant information, such as earnings data, Gainful Employment disclosures required under 34 CFR 668.412(a), and cohort default rate, if available and/or applicable.
- Comprehensive information about the different terms and features of Direct Loan repayment options and forgiveness benefits, including information about income-driven repayment plans, Public Service Loan Forgiveness, and Teacher Loan Forgiveness, and information about student loan deferments and forbearances.
- A reminder that information and assistance with Federal student loans, such as loan consolidation, rehabilitation, and participation in income-driven repayment plans, are provided by the Department at no charge and that the borrower does not need to pay someone for help.
- Information about establishing a relationship with a loan servicer, including, among other things, keeping address and contact information up-to-date and learning who to contact and how to ask questions.
- Information about the Department's Federal Student Aid Ombudsman Group, including a description of the services it provides and contact information.
- Information about the Department's Federal Student Aid Feedback System (see Electronic Announcement published July 1, 2016, "Federal Student Aid Launches Online Feedback System," located on the Information for Financial Aid Professionals (IFAP) Web site).

Waivers

Institutions selected for this experiment will be granted flexibility in implementing their Direct Loan counseling program. Section 485(l)(1)(A) of the HEA and 34 CFR 685.304(a)(1) and (a)(2) provide that an institution must ensure that entrance counseling is conducted with each Direct Loan student borrower prior to making the first disbursement of the loan, unless the borrower has received a prior Direct Loan or a Federal Family Education Loan.

However, institutions participating in this experiment will require additional counseling for their Direct Loan borrowers included in the treatment group. The additional counseling approaches to be used (*i.e.,* the Department's FACT product; a third-party counseling product or third-party servicer; or institutionally developed alternative counseling) must be identified by the institution in its Letter of Interest. If the institution enters into an agreement with a third party to provide the additional counseling, that agreement is subject to the third-party servicer requirements of the regulations in 34 CFR 668.25. As is required for all third-party servicers, such third parties must protect all student information they receive from the institution.

All other provisions and regulations of the title IV, HEA student assistance programs will remain in effect.

Reporting and Evaluation

The Department is interested in assessing the impact of requiring additional loan counseling for students attending different types of institutions. The evaluation will allow the Department to examine the effectiveness of requiring additional counseling across all of the institutions and students participating in the experiment, as well as for groups of institutions using similar types of content and modes of delivery of loan counseling for groups of borrowers.

To support an evaluation of the impact of a policy change similar to the one tested in this experiment, the design of the evaluation requires data from both a treatment group of students required to participate in additional loan counseling and a control group of students who received their student aid under existing rules.

Participating institutions will, on a regular basis, provide to the Department a list containing identifying information for each of the institution's Direct Loan student borrowers who had previously received entrance counseling from the institution or from a different institution. Those borrowers will be considered for inclusion in the experiment for the subsequent year.

The Department will assign each eligible borrower to either the treatment group, which will receive the additional loan counseling, or to the control group, for which the institution may not require any additional loan counseling.

Once a borrower is placed into the treatment or control group, the borrower must remain in that group throughout the borrower's enrollment at the institution during the institution's participation in the experiment.

To obtain some key outcome measures (*e.g.*, receipt and amount of loan funds, academic progression, completion or withdrawal), the Department will draw on information contained in the Department's systems.

In addition, each institution will be required to provide to the Department existing school records for all students participating in the experiment (whether assigned to the treatment or control group) for the purpose of assessing the impacts of the additional loan counseling intervention. The records will likely include the borrower's academic information (*e.g.*, credits taken, credits earned, grade point average, completion information, and credentials earned) as well as financial information (*e.g.*, cost of attendance, State and institutional aid received, non-Federal loans received, and other information relating to financial aid received by the borrower).

Finally, on an annual basis, institutions participating in the experiment will be required to provide information about the method and content of the loan counseling and of their experiences with the experiment. The Department will collect from each participating institution the details and components of the additional counseling that the institution requires, including the content and method of delivery (*e.g.*, individual in-person counseling, group counseling, Web-based counseling) for each cohort of students. Institutions will receive more specific information about evaluation and reporting requirements prior to the start of the experiment.

Institutions participating in this experiment will be required to submit a narrative description and self-assessment of their implementation of the experiment. At a minimum, the narrative should include any unforeseen challenges and unexpected benefits.

Application and Selection

Institutions are invited to apply to participate in the experiment described in this notice. The Department is interested in information such as: (1) An estimate of the number of the institution's Direct Loan borrowers who, for an award year, have previously completed entrance counseling and, if the institution believes it does not have the capacity to include all of those borrowers in the experiment, an estimate of the number of borrowers it wishes to include in the experiment (both in the control and treatment groups) for each award year; (2) how the additional counseling will be provided, *e.g.*, through the Department's FACT product, a third-party counseling product or a third-party servicer, or an institutionally developed alternative; (3) a brief description of the additional counseling that the institution proposes to use in the experiment, including its content and mode of delivery; and (4) how the institution's proposed approach to additional loan counseling is supported by relevant and available research or evidence (if applicable) and the source of such research or evidence.

We understand that the actual number of students who will be included in the experiment may be different than the estimate provided in the Letter of Interest, as may the proposed counseling method.

From the institutions that apply, the Secretary will select a limited number that represent a diverse cross-section of title IV participating institutions to participate in this experiment. In choosing participants, the Secretary will consider, among other institutional characteristics, the institution's history of compliance with the Department's regulatory and statutory requirements for participation in the title IV, HEA programs; the institution's administrative capability and financial responsibility; and whether the institution has adequately described in its Letter of Interest how it will comply with the requirements of the experiment outlined in this notice.

In addition to the above items, when selecting institutions to participate in the experiment, the Secretary will consider all available information, including, but not limited to: Institutional type and control, the institution's geographic location, the institution's cohort default rate, the median amount of Direct Loan funds borrowed by the institution's students, student outcomes (*e.g.*, retention and completion rates and loan repayment rates), and the type of counseling the institution intends to offer (*i.e.*, FACT, third-party product or third-party servicer, or institutionally developed counseling).

The Secretary's selection of institutions will be guided by the purpose of the experiment, which is to evaluate alternative delivery modes, content, and timing to current counseling requirements, and to inform policymakers about any recommended changes to those requirements. The ESI does not provide broad regulatory relief or general exceptions to the Department's statutory and regulatory requirements.

If a selected institution consists of more than one location (*e.g.*, campus), the Secretary may limit the experiment to a single location, unless the institution provides the Secretary with a rationale for expanding the experiment to one or more of the institution's other locations.

The Secretary will consult with those institutions that have been invited to participate in the experiment on the final design of the experiment through Webinars or other outreach activities.

Institutions selected for participation in an experiment will have their Program Participation Agreement (PPA) with the Secretary amended to reflect the specific statutory or regulatory provisions that the Secretary has waived for participants in the experiment at the institution. The institution must acknowledge its commitment to adequately establish the procedures necessary to successfully administer the experiment. The amended PPA will also document the agreement between the Secretary and the institution about how the experiment will be conducted and will specify the evaluation and reporting requirements for the experiment.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1094a(b).

Dated: August 9, 2016.

Lynn Mahaffie,

Deputy Assistant Secretary for Policy, Planning and Innovation, Delegated the Duties of Assistant Secretary for Postsecondary Education.

[FR Doc. 2016–19297 Filed 8–12–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Performance Partnership Pilots

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Notice.

Overview Information:

Performance Partnership Pilots

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.420A.

Dates:

Applications Available: August 15, 2016.

Deadline for Notice of Intent to Apply: September 29, 2016.

Note: Submission of a notice of intent to apply is optional.

Deadline for Transmittal of Applications: October 31, 2016.

Deadline for Intergovernmental Review: December 28, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Performance Partnership Pilots (P3), first authorized by Congress for FY 2014 by the Consolidated Appropriations Act, 2014 (2014 Appropriations Act) and reauthorized for FY 2015 by the Consolidated and Further Continuing Appropriations Act, 2015 (2015 Appropriations Act) and for FY 2016 by the Consolidated Appropriations Act, 2016 (2016 Appropriations Act) (together, the Acts), enable pilot sites to test innovative, outcome-focused strategies to achieve significant improvements in educational, employment, and other key outcomes for disconnected youth using new flexibility to blend existing Federal funds and to seek waivers of associated program requirements.

Background: The Acts authorize the Departments of Education (ED or the Department), Labor (DOL), Health and Human Services (HHS), Housing and Urban Development (HUD),[1] and Justice (DOJ),[2] the Corporation for National and Community Service (CNCS), and the Institute of Museum and Library Services (IMLS) (collectively, the Agencies), to enter into Performance Partnership Agreements (performance agreements) with State, local, or tribal governments to provide additional flexibility in using certain of the Agencies' discretionary funds,[3] including competitive and formula grant funds, across multiple Federal programs. Entities that seek to participate in these pilots will be required to commit to achieving significant improvements in outcomes for disconnected youth in exchange for this new flexibility. The authorizing statute states that " '[t]o improve outcomes for disconnected youth' means to increase the rate at which individuals between the ages of 14 and 24 (who are low-income and either homeless, in foster care, involved in the juvenile justice system, unemployed, or not enrolled in or at risk of dropping out of an educational institution) achieve success in meeting educational, employment, or other key goals."

Government and community partners have invested considerable attention and resources to meet the needs of disconnected youth. However, practitioners, youth advocates, and others on the front lines of service delivery have observed that flexibility can be a key tool to address certain programmatic and administrative obstacles to achieving meaningful improvements in education, employment, health, and well-being for these young people.

P3 tests the hypothesis that additional flexibility for States, local governments, and tribes, in the form of blending funds and waivers of certain programmatic requirements, can help overcome some of the significant hurdles that States, local governments, and tribes face in providing intensive, comprehensive, and sustained service pathways and improving outcomes for disconnected youth. For example, P3 can be used to better coordinate and align the multiple systems that serve youth. P3 may help address the "wrong pockets" problem, where entities that observe improved outcomes or other benefits due to an intervention are unable to use Federal funds to support that intervention due to program restrictions. P3 flexibility may also allow the testing of an innovative approach to help build additional evidence about what works. If this hypothesis proves true, providing necessary and targeted flexibility to remove or overcome these hurdles will help to achieve significant benefits for disconnected youth, the communities that serve them, and the involved agencies and partners.

The statutory definition of "disconnected youth" specifically identifies several high-need subpopulations of low-income youth, including youth who are homeless, youth in foster care, youth involved in the juvenile justice system, and youth who are unemployed or not in school or at risk of dropping out. We wish to note that there are a number of other high-need subpopulations of disconnected youth who are not specifically enumerated in statute but are also at risk of dropping out. For example, English learners (ELs) are at great risk of dropping out; the average cohort graduation rate for ELs during the 2013–14 school year was only 62.6 percent, while the national average cohort graduation rate for all youth was 82.3 percent. Similarly, the average cohort graduation rate for youth with a disability receiving special education and related services under the Individuals with Disabilities Education Act (IDEA) was significantly lower than that of youth who did not receive services under IDEA: 63.1 percent during the 2013–14 school year.[4] Immigrants and refugees are another high-need subpopulation at great risk of dropping out. In 2014, the status dropout rate of immigrant youth ages 16 to 24 was 12 percent, compared with 8 percent for children of foreign-born parents, and 6 percent for children with native-born parents.[5] Students in foster care also are at great risk of dropping out. A 2014 study that examined cross-sectional data on California students who were in foster care at some point during the 2009–10 school year found that the single-year dropout rate for California students in foster care was more than 8 percent, nearly three times higher than the statewide dropout rate (3 percent).[6] Applicants wishing to serve a subpopulation of disconnected youth not otherwise named in the statutory definition—such as the examples above—should consider whether that subpopulation faces an elevated risk of dropping out based on sound research.

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[1] The 2016 Appropriations Act authorizes HUD to enter into performance agreements with respect to FY 2016 Homeless Assistance Grants.

[2] DOJ's Office of Justice Programs was first authorized to enter into performance agreements by the 2015 Appropriations Act.

[3] Discretionary funds are funds that Congress appropriates on an annual basis, rather than through a standing authorization. They exclude "entitlement" (or mandatory) programs such as Social Security, Medicare, Medicaid, most Foster Care IV–E programs, Vocational Rehabilitation State Grants, and Temporary Assistance to Needy Families (TANF). Discretionary programs administered by the Agencies support a broad set of public services, including education, job training, health and mental health, and other low-income assistance programs.

FY 2016 Funds

This notice invites applications for a third round of pilots as authorized by the 2016 Appropriations Act. That act extended the P3 authority to allow pilots to blend and/or seek waivers under eligible FY 2016 funds from programs at ED, DOL, HHS, CNCS, IMLS, HUD, and DOJ.

Homeless Assistance Act Grants

The 2016 Appropriations Act authorizes the inclusion in P3 of McKinney-Vento Act Homeless Assistance Grants administered by HUD, including the Continuum of Care (CoC) Program and Emergency Solutions Grant Program (ESG), in up to 10 CoCs. The CoC Program is designed to assist individuals (including unaccompanied youth) and families experiencing homelessness and to provide the services needed to help such individuals move into housing, with the goal of long-term stability.[7] In local communities, the group tasked with carrying out the responsibilities of the CoC Program for a defined geographic area, including ensuring that all resources used to prevent and end homelessness within that geographic area are allocated strategically, is called the CoC. This group consists of a coalition of community stakeholders with an interest in preventing and ending homelessness.

The Agencies expect that pilots that include Homeless Assistance Grant funding will include their local CoC's input and engagement in identifying gaps and needs in the community for housing and serving disconnected youth experiencing homelessness. The Agencies further expect that the pilots will address these CoC-identified needs and that the CoCs will have approved the use of grant funds for this purpose.

Absolute Priorities

For purposes of this competition, absolute priorities create separate categories for scoring and considering applications. Applicants must select one of these absolute priorities. Because a diverse group of communities could benefit from P3, we include absolute priorities for applications that propose to serve disconnected youth in one or more rural communities only (Absolute Priority 2), applications that propose to serve disconnected youth in one or more Indian tribal communities (Absolute Priority 3), and applications that propose to serve disconnected youth in other communities (Absolute Priority 1). P3 is intended, through a demonstration, to identify effective strategies for serving disconnected youth. We are aware such strategies may differ across environments and wish to test the authority in a variety of settings.

In this FY 2016 competition, we are also including an absolute priority for communities that have experienced recent civil unrest (Absolute Priority 4), consistent with requirements of the 2016 Appropriations Act. Though the economy has recovered strongly in many places, many communities continue to struggle with high youth unemployment, low graduation rates, and crime. These and other continuing challenges can manifest in different instances of civil unrest, such as large protests or instances of civil disobedience, increases in self-directed or interpersonal violence in concentrated areas, or civic disorder prompted by a public health emergency. In response to the priority, an applicant should describe the instance(s) of civil unrest, including (1) a description of the civil unrest that occurred in the community or communities it intends to serve; and (2) the date or dates the civil unrest occurred. We include this priority in the FY 2016 P3 competition in the hopes that P3 flexibilities, including waivers and the blending of funds, will empower communities to improve educational and employment outcomes for disconnected youth in these communities. Under 34 CFR 75.105(c)(3) we consider only applications that meet Absolute Priority 1, 2, 3, or 4.

Competitive Preference Priorities

Competitive preference priorities allow applicants to receive extra points for satisfying certain criteria.

Competitive Preference Priority 1

In addition to the absolute priorities, we also include four competitive preference priorities. We include a competitive preference priority for projects that are likely to result in significantly better educational or employment outcomes for those disconnected youth who are neither employed nor enrolled in education and who also face significant barriers to accessing education and employment. Involvement with the justice system is an example of a significant barrier to education and employment for youth who are neither employed nor enrolled in school. Many youth involved with the justice system face significant barriers to accessing the education and training they need to achieve independence and reintegrate into the community because the education and training available to them through correctional facilities, as well as upon release, often does not meet their needs.[8] For older youth involved with the adult criminal justice system, having a criminal record can severely limit the ability to secure employment.[9] Reconnecting these young people to education and employment is a national imperative, and including this priority as a competitive preference priority will create incentives for applicants and communities to design projects to serve this hard-to-reach population.

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[4] EDFacts/Consolidated State Performance Report, School Year 2013–14. Retrieved from *nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2013-14.asp.*

[5] Child Trends Data Bank (2015). High School Dropout Rates. Retrieved from *www.childtrends.org/wp-content/uploads/2014/10/01_Dropout_Rates.pdf.*

[6] Wiegmann, W., *et al.* (2014). The Invisible Achievement Gap Part 2: How the Foster Care Experiences of California Public School Students Are Associated with Their Education Outcomes. Retrieved from *www.stuartfoundation.org/wp-content/uploads/2016/04/IAGpart2.pdf.*

[8] See, for example, Juvenile Justice Students Face Barriers to High School Graduation and Job Training (2010). Report No. 10–55. Tallahassee, FL: Office of Program Policy Analysis and Government Accountability, the Florida Legislature. Retrieved from: *www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1055rpt.pdf.*

[9] See, for example, Pager, D.P. and Western, B.(2009). Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men: Final Report to the National Institute of Justice. Document No. 228584. Retrieved from: *www.ncjrs.gov/pdffiles1/nij/grants/228584.pdf.*

Competitive Preference Priority 2

We include a competitive preference priority for projects that provide all disconnected youth served by the project with paid work-based learning opportunities because addressing the employment needs of disconnected youth is critical to improving their well-being and preparing them for lives as productive adults. We note as well that new evidence indicates that the benefits of work-based learning opportunities extend beyond improving the employment outcomes of youth. A recent evaluation of the summer work and learning opportunity program offered by New York City for youth ages 14 through 21, which selected participants using a randomized lottery, found that, within five to eight years after participation, the incarceration and mortality rates of participants were significantly lower than those of their peers who were not selected to participate in the program.[10] For youth who are not enrolled in school, year-round employment, and not just employment during the summer, is critically important. Under this competitive preference priority, the work-based learning opportunities must be integrated with academic and technical instruction because research suggests that work experience must be combined with academic and technical training in order to have a positive impact on the employment and earnings outcomes of youth.[11]

Competitive Preference Priority 3

This competition also includes a competitive preference priority for projects that are designed to serve and coordinate with a federally designated Promise Zone. Promise Zone designees have committed to establishing comprehensive, coordinated approaches in order to ensure that America's most vulnerable children succeed from cradle to career. Twenty-two Promise Zones have been designated. They are located in: Los Angeles, California; Sacramento, California; San Diego, California; South Los Angeles, California; Hartford, Connecticut; Southwest Florida Regional Planning Commission in Glades County, Hendry County, and the Immokalee Community in Collier County; Atlanta, Georgia; Evansville, Indiana; Indianapolis, Indiana; the Southeastern Kentucky Highlands in Kentucky; Minneapolis, Minnesota; St. Louis and St. Louis County, Missouri; Camden, New Jersey; Turtle Mountain Band of Chippewa Indians, Rollete County, North Dakota; The Choctaw Nation of Oklahoma; Philadelphia, Pennsylvania; Roosevelt Roads, Puerto Rico; the South Carolina Low Country; the Pine Ridge Indian Reservation of the Oglala Sioux Tribe, South Dakota; Nashville, Tennessee; San Antonio, Texas; and the Spokane Tribe of Indians, Washington. The Promise Zone designation is designed to assist local leaders in creating jobs, increasing economic activity, improving educational opportunities, leveraging private investment, and reducing violent crime in high-poverty urban, rural, and tribal communities.[12]

Competitive Preference Priority 4

This competition also includes a competitive preference priority for applicants that plan to conduct independent impact evaluations of at least one service-delivery or operational component of their pilots (site-specific evaluation), in addition to participating in any national P3 evaluation, which is discussed in the *Program Requirements* section of this notice. In proposing these site-specific impact evaluations, applicants should use the strongest possible designs and research methods and use high-quality administrative data in order to maximize confidence in the evaluation findings and minimize the costs of conducting these evaluations. Federal start-up funds and blended funds may be used to finance these evaluations.

Priorities: This competition includes four absolute priorities, four competitive preference priorities, and three invitational priorities. Absolute Priorities 1, 2, and 3 and Competitive Preference Priorities 1, 2, and 4 are from the notice of final priorities, requirements, definitions, and selection criteria for this program published on April 28, 2016 in the **Federal Register** (81 FR 25339) (P3 NFP). Absolute Priority 4 is from section 525(b) of Division H of the 2016 Appropriations Act. Competitive Preference Priority 3 is from the notice of final priority—Promise Zones, published in the **Federal Register** on March 27, 2014 (79 FR 17035) (Promise Zones NFP).

Absolute Priorities: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet Absolute Priority 1, 2, 3, or 4.

Note: Applicants must indicate in the Appendix section of their applications, under "Other Attachments Form," whether they are applying under Absolute Priority 1, Absolute Priority 2, Absolute Priority 3, or Absolute Priority 4. An applicant that applies under Absolute Priority 2, Absolute Priority 3, or Absolute Priority 4, but is not eligible for funding under that absolute priority, will be considered for funding under Absolute Priority 1.

These priorities are:

Absolute Priority 1—Improving Outcomes for Disconnected Youth.

To meet this priority, an applicant must propose a pilot that is designed to improve outcomes for disconnected youth.

Absolute Priority 2—Improving Outcomes for Disconnected Youth in Rural Communities.

To meet this priority, an applicant must propose a pilot that is designed to improve outcomes for disconnected youth in one or more rural communities (as defined in this notice) only.

Absolute Priority 3—Improving Outcomes for Disconnected Youth in Tribal Communities.

To meet this priority, an applicant must (1) propose a pilot that is designed to improve outcomes for disconnected youth who are members of one or more State- or federally-recognized Indian tribal communities; and (2) represent a partnership that includes one or more State- or federally-recognized Indian tribes.

Absolute Priority 4—Improving Outcomes for Disconnected Youth in Communities that Have Recently Experienced Civil Unrest.

To meet this priority, an applicant must propose a pilot that is designed to improve outcomes for disconnected youth in one or more communities that have recently experienced civil unrest.

Competitive Preference Priorities: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional five points to an application based on how well the application meets Competitive Preference Priority 1, an additional three points to an application that meets

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[10] Gelber, A., Isen, A. and Kessler, J.B. (2014). The Effects of Youth Employment: Evidence from New York City Summer Youth Employment. Program Lotteries. NBER Working Paper No. 20810. Cambridge, MA: National Bureau of Economic Research.

[11] Sattar, S. (2010). Evidence Scan of Work Experience Programs. Oakland, CA: Mathematica Policy Research. See also Roder, A. and Elliott, M. (2014). Sustained Gains: Year-Up's Continued Impact on Young Adults' Earnings. New York, NY: Economic Mobility Corporation, Inc.

[12] For additional information on Promise Zones, see *www.hudexchange.info/programs/promise-zones/*.

Competitive Preference Priority 2, an additional two points to an application that meets Competitive Preference Priority 3, and up to an additional 10 points to an application based on how well the application meets Competitive Preference Priority 4.

Applicants may address more than one of the competitive preference priorities. An applicant must identify in the Appendix section of its application, under "Other Attachments Form," the priority or priorities it addresses.

Competitive Preference Priority 1—Improving Outcomes for Youth Who Are Unemployed and Out of School (Up to 5 points).

To meet this priority, an applicant must propose a pilot that—

(1) will serve disconnected youth who are neither employed nor enrolled in education and who face significant barriers to accessing education and employment; and

(2) is likely to result in significantly better educational or employment outcomes for such youth.

Competitive Preference Priority 2—Work-Based Learning Opportunities (0 or 3 points).

To meet this priority, an applicant must propose a pilot that will provide all of the disconnected youth it proposes to serve with paid work-based learning opportunities, such as opportunities during the summer, which are integrated with academic and technical instruction.

Competitive Preference Priority 3—Promise Zones (0 or 2 points).

This priority is for projects that are designed to serve and coordinate with a federally designated Promise Zone.

Competitive Preference Priority 4—Site-Specific Evaluation (Up to 10 points).

To meet this priority, an applicant must propose to conduct an independent evaluation of the impacts on disconnected youth of its overall program or specific components of its program that is a randomized controlled trial or a quasi-experimental design study. The extent to which an applicant meets this priority will be based on the clarity and feasibility of the applicant's proposed evaluation design, the appropriateness of the design to best capture key pilot outcomes, the prospective contribution of the evaluation to the knowledge base about serving disconnected youth (including the rigor of the design and the validity and generalizability of the findings), and the applicant's demonstrated expertise in planning and conducting a randomized controlled trial or quasi-experimental design study.

In order to meet this priority, an applicant also must include the following two documents as separate attachments to its application:

1. A Summary Evaluation Plan that describes how the pilot or a component of the pilot (such as a discrete service-delivery strategy) will be rigorously evaluated. The evaluation plan may not exceed eight pages. The plan must include the following:

- A brief description of the research question(s) proposed for study and an explanation of its/their relevance, including how the proposed evaluation will build on the research evidence base for the project as described in the application and how the evaluation findings will be used to improve program implementation;
- A description of the randomized controlled trial or quasi-experimental design study methodology, including the key outcome measures, the process for forming a comparison or control group, a justification for the target sample size and strategy for achieving it, and the approach to data collection (and sources) that minimizes both cost and potential attrition;
- A proposed evaluation timeline, including dates for submission of required interim and final reports;
- A description of how, to the extent feasible and consistent with applicable Federal, State, local, and tribal privacy requirements, evaluation data will be made available to other, third-party researchers after the project ends; and
- A plan for selecting and procuring the services of a qualified independent evaluator (as defined in this notice) prior to enrolling participants (or a description of how one was selected if agreements have already been reached). The applicant must describe how it will ensure that the qualified independent evaluator has the capacity and expertise to conduct the evaluation, including estimating the effort for the qualified independent evaluator. This estimate must include the time, expertise, and analysis needed to successfully complete the proposed evaluation.

2. A supplementary Evaluation Budget Narrative, which is separate from the overall application budget narrative and provides a description of the costs associated with funding the proposed program evaluation component, and an explanation of its funding source—*i.e.,* blended funding, start-up funding, State, local, or tribal government funding, or other funding (such as philanthropic). The budget must include a breakout of costs by evaluation activity (such as data collection and participant follow-up), and the applicant must describe a strategy for refining the budget after the services of an evaluator have been procured. The applicant must include travel costs for the qualified independent evaluator to attend at least one in-person conference in Washington, DC during the period of evaluation. All costs included in this supplementary budget narrative must be reasonable and appropriate to the project timeline and deliverables.

The Agencies will review the Summary Evaluation Plans and Evaluation Budget Narratives and provide feedback to applicants that are determined to have met the priority and that are selected as pilots. After award, these pilots must submit to the lead Federal agency a detailed evaluation plan of no more than 30 pages that relies heavily on the expertise of a qualified independent evaluator. The detailed evaluation plan must address the Agencies' feedback and expand on the Summary Evaluation Plan.

Invitational Priorities:

For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

Invitational Priority 1—Improving Outcomes for Homeless Youth.

To meet this priority, an applicant must propose a pilot that—

(1) will serve disconnected youth who are homeless youth (as defined in this notice); and

(2) is likely to result in significantly better educational or employment outcomes for such youth.

Invitational Priority 2—Improving Outcomes for Youth Involved in the Justice System.

To meet this priority, an applicant must propose a pilot that—

(1) will serve disconnected youth who are involved in the justice system; and

(2) is likely to result in significantly better educational or employment outcomes for such youth.

Invitational Priority 3—Improving Outcomes for Youth in Foster Care.

To meet this priority, an applicant must propose a pilot that—

(1) will serve disconnected youth who are or have ever been in foster care; and

(2) is likely to result in significantly better educational or employment outcomes for such youth.

Application Requirements:

The application requirements for this competition are from the P3 NFP. All applicants must meet these application requirements in order to be considered for funding and selection as a pilot. The applicants are expected to provide the information specified in the application requirements and address the selection criteria that reviewers use to evaluate application in the form of an application narrative of no more than 45 pages. With the exception of the memorandum of understanding or letter of commitment described in application requirement (e)(2) and the assurance described in application requirement (c)(2), applicants must provide the documents or information specified in the application requirements in the applications they are required to submit by October 31, 2016. To reduce burden on applicants, we require only top-scoring applicants to submit the memorandum of understanding or letter of commitment described in application requirement (e)(2) and the assurance described in application requirement (c)(2). We will notify top-scoring applicants by telephone and email following the peer review. These applicants will be directed to transmit the memorandum of understanding or letter of commitment required by application requirement (e)(2) and the assurance described in application requirement (c)(2) to *disconnectedyouth@ed.gov* within 21 calendar days of the notification.

(a) *Executive Summary.* The applicant must provide an executive summary that briefly describes the proposed pilot, the flexibilities being sought, and the interventions or systems changes that would be implemented by the applicant and its partners to improve outcomes for disconnected youth.

(b) *Target Population.* The applicant must complete Table 1, specifying the target population(s) for the pilot, including the age range of youth who will be served and the estimated number of youth who will be served over the course of the pilot.

Table 1: Target Population

Target Population	Age Range	Estimated Number of Youth Served Over the Course of the Pilot

(c) *Flexibility, including waivers:*

1. *Federal requests for flexibility, including waivers.* For each program to be included in a pilot, the applicant must complete Table 2, Requested Flexibility. The applicant must identify two or more discretionary Federal programs that will be included in the pilot,[13] at least one of which must be administered (in whole or in part) by a State, local, or tribal government.[14] In table 2, the applicant must identify one or more program requirements that would inhibit implementation of the pilot and request that the requirement(s) be waived in whole or in part. Examples of potential waiver requests and other requests for flexibility include, but are not limited to: Blending of funds and changes to align eligibility requirements, allowable uses of funds, and performance reporting.

Table 2: Requested Flexibility

Program Name	Federal Agency	Program Requirements to be Waived in Whole or in Part	Statutory or Regulatory Citation	Name of Program Grantee	Blending Funds? (Yes/No)

Note: Please note in "Name of Program Grantee" if the grantee is a State, local, or tribal government, or non-governmental entity.

2. *Non-Federal flexibility, including waivers.* The applicant must provide written assurance that:

A. The State, local, or tribal government(s) with authority to grant any needed non-Federal flexibility, including waivers, has approved or will approve such flexibility within 60 days of an applicant's designation as a pilot finalist;[15] or

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[13] Applicants are encouraged to consult the list of examples of programs that are potentially eligible for inclusion in pilots in the application package.

[14] Local governments that are requesting waivers of requirements in State-administered programs are strongly encouraged to consult with the State agencies that administer the programs in preparing their applications.

B. Non-Federal flexibility, including waivers, is not needed in order to successfully implement the pilot.[16]

(d) *Logic Model.* The applicant must provide a graphic depiction (not longer than one page) of the pilot's logic model that illustrates the underlying theory of how the pilot's strategy will produce intended outcomes.

(e) *Partnership Capacity and Management.* The applicant must—

1. Identify the proposed partners, including any and all State, local, and tribal entities and non-governmental organizations that would be involved in implementation of the pilot, and describe their roles in the pilot's implementation using Table 3. Partnerships that cross programs and funding sources but are under the jurisdiction of a single agency or entity must identify the different sub-organizational units involved.

2. Provide a memorandum of understanding or letter of commitment signed by the executive leader or other accountable senior representative of each partner that describes each proposed partner's commitment, including its contribution of financial or in-kind resources (if any).[17]

Table 3: Pilot Partners

Partner	Type of Organization (State agency, local agency, community-based organization, business)	Description of Partner's Role in the Pilot

Note: Any grantees mentioned in Table 2 that are not the lead applicant must be included in Table 3.

(f) *Data and Performance Management Capacity.*

The applicant must propose outcome measures and interim indicators to gauge pilot performance using Table 4. At least one outcome measure must be in the domain of education, and at least one outcome measure must be in the domain of employment. Applicants may specify additional employment and education outcome measures, as well as outcome measures in other domains of well-being, such as criminal justice, physical and mental health, and housing. Regardless of the outcome domain, applicants must identify at least one interim indicator for each proposed outcome measure. Applicants may apply one interim indicator to multiple outcome measures, if appropriate.

Examples of outcome measures and interim indicators follow. Applicants may choose from this menu or may propose alternative indicators and outcome measures if they describe why their alternatives are more appropriate for their proposed projects.

EDUCATION DOMAIN

Outcome measure	Interim indicator
High school diploma or equivalency attainment	• High school enrollment. • Reduction in chronic absenteeism. • Grade promotion. • Performance on standardized assessments. • Grade Point Average. • Credit accumulation.
College completion	• Enrollment. • Course attendance. • Credit accumulation. • Retention.

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[15] This includes, for example, for local governments, instances in which a waiver must be agreed upon by a State. It also includes instances in which waivers may only be requested by the State on the local government's behalf, such as waivers of the performance accountability requirements for local areas established in Title I of the Workforce Innovation and Opportunity Act.

[16] Only top-scoring applicants notified by ED must submit this written assurance. The assurance must be transmitted to *disconnectedyouth@ed.gov* by no later than 21 calendar days of the applicant's notification by ED that is a top-scoring applicant.

[17] Only top-scoring applicants notified by ED must submit the memorandum of understanding or letter of commitment. This document must be transmitted to *disconnectedyouth@ed.gov* by no later than 21 calendar days of the applicant's notification by ED that it is a top-scoring applicant.

EMPLOYMENT DOMAIN

Outcome measure	Interim indicator
Sustained Employment	• Unsubsidized employment at time periods after exit from the program. • Median earnings at time periods after exit from the program.

The specific outcome measures and interim indicators the applicant uses should be grounded in its logic model, and informed by applicable program results or research, as appropriate. Applicants must also indicate the source of the data, the proposed frequency of collection, and the methodology used to collect the data.

Table 4: Outcome Measures and Interim Indicators

Domain	Outcome Measure	Interim Indicator(s)
Education		
	Data Source:	Data Source:
	Frequency of Collection:	Frequency of Collection:
	Methodology:	Methodology:
Employment		
	Data Source:	Data Source:
	Frequency of Collection:	Frequency of Collection:
	Methodology:	Methodology:
Other		
	Data Source:	Data Source:
	Frequency of Collection:	Frequency of Collection:
	Methodology:	Methodology:

(g) *Budget and Budget Narrative.*

1. The applicant must complete Table 5 to provide the following budget information:

A. For each Federal program, the grantee, the amount of funds to be blended or braided (as defined in this notice), the percentage of total program funding received by the grantee that the amount to be blended or braided represents, the Federal fiscal year of the award, and whether the grant has already been awarded; and

B. The total amount of funds from all Federal programs that would be blended or braided under the[18] pilot.

Table 5: Federal Funds[18]

Program Name	Grantee	Amount of Funds to be Blended	Blended Funds as a Percentage of Grantee's Total Award	Federal Fiscal Year of Award	Grant Already Awarded? (Y/N)
TOTAL BLENDED	▨		▨	▨	▨
Program Name	Grantee	Amount of Funds to be Braided	Braided Funds as a Percentage of Grantee's Total Award	Federal Fiscal Year of Award	Grant Already Awarded? (Y/N)
TOTAL BRAIDED	▨		▨	▨	▨

Note: Applicants may propose to expand the number of Federal programs supporting pilot activities using future funding beyond FY 2016, which may be included in pilots if Congress extends the P3 authority.

Program Requirements:

The program requirements for this competition are from the P3 NFP.

(a) *National evaluation.* In addition to any site-specific evaluations that pilots may undertake, the Agencies may initiate a national P3 evaluation of the pilots selected in Round 3, as well as those selected in subsequent rounds.[19] Each P3 pilot must participate fully in any federally sponsored P3 evaluation activity, including the national evaluation of P3, which will consist of the analysis of participant characteristics and outcomes, an implementation analysis at all sites, and rigorous impact evaluations of promising interventions in selected sites. The applicant must acknowledge in writing its understanding of these requirements by submitting the form provided in Appendix A, "Evaluation Commitment Form," as an attachment to its application.

(b) *Community of practice.* All P3 pilots must participate in a community of practice (as defined in this notice) that includes an annual in-person meeting of pilot sites (paid with grant funding that must be reflected in the pilot budget submitted) and virtual peer-to-peer learning activities. This commitment involves each pilot site working with the lead Federal agency on a plan for supporting its technical assistance needs, which can include learning activities supported by foundations or other non-Federal organizations as well as activities financed with Federal funds for the pilot.

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[18] Applicants are encouraged to consult the list of examples of programs that are potentially eligible for inclusion in pilots in the application package.

[19] The initiation of any federally sponsored national P3 evaluation activities is dependent upon the availability of sufficient funds and resources.

(c) *Consent.* P3 pilots must secure necessary consent from parents, guardians, students, or youth program participants to access data for their pilots and any evaluations, in accordance with applicable Federal, State, local, and tribal laws. Applicants must explain how they propose to ensure compliance with Federal, State, local, and tribal privacy laws and regulations as pilot partners share data to support effective coordination of services and link data to track outcome measures and interim indicators at the individual level to perform, where applicable, a low-cost, high-quality evaluation.[20]

(d) *Performance agreement.* Each P3 pilot, along with other non-Federal government entities involved in the partnership, must enter into a performance agreement that will include, at a minimum, the following (as required by section 526(c)(2) of Division H of the 2014 Appropriations Act):

1. The length of the agreement;
2. The Federal programs and federally funded services that are involved in the pilot;
3. The Federal discretionary funds that are being used in the pilot;
4. The non-Federal funds that are involved in the pilot, by source (which may include private funds as well as governmental funds) and by amount;
5. The State, local, or tribal programs that are involved in the pilot;
6. The populations to be served by the pilot;
7. The cost-effective Federal oversight procedures that will be used for the purpose of maintaining the necessary level of accountability for the use of the Federal discretionary funds;
8. The cost-effective State, local, or tribal oversight procedures that will be used for the purpose of maintaining the necessary level of accountability for the use of the Federal discretionary funds;
9. The outcome (or outcomes) that the pilot is designed to achieve;
10. The appropriate, reliable, and objective outcome-measurement methodology that will be used to determine whether the pilot is achieving, and has achieved, specified outcomes;
11. The statutory, regulatory, or administrative requirements related to Federal mandatory programs that are barriers to achieving improved outcomes of the pilot; and
12. Criteria for determining when a pilot is not achieving the specified outcomes that it is designed to achieve and subsequent steps, including:

i. The consequences that will result; and

ii. The corrective actions that will be taken in order to increase the likelihood that the pilot will achieve such specified outcomes.

Applicants are advised that the Agencies expect to make the performance agreements available to the public.

Definitions: The following definitions are from the P3 NFP, the 2014 Appropriations Act, and 34 CFR 77.1.

Blended funding is a funding and resource allocation strategy that uses multiple existing funding streams to support a single initiative or strategy. Blended funding merges two or more funding streams, or portions of multiple funding streams, to produce greater efficiency and/or effectiveness. Funds from each individual stream lose their award-specific identity, and the blended funds together become subject to a single set of reporting and other requirements, consistent with the underlying purposes of the programs for which the funds were appropriated.

Braided funding is a funding and resource allocation strategy in which entities use existing funding streams to support unified initiatives in as flexible and integrated a manner as possible while still tracking and maintaining separate accountability for each funding stream. One or more entities may coordinate several funding sources, but each individual funding stream maintains its award-specific identity. Whereas blending funds typically requires one or more waivers of associated program requirements, braiding does not. However, waivers may be used to support more effective or efficient braiding of funds.

Community of practice means a group of pilots that agrees to interact regularly to solve persistent problems or improve practice in an area that is important to them and the success of their projects.

English learner means an individual who has limited ability in reading, writing, speaking, or comprehending the English language, and—

(A) Whose native language is a language other than English; or

(B) Who lives in a family or community environment where a language other than English is the dominant language.

Evidence-informed interventions bring together the best available research, professional expertise, and input from youth and families to identify and deliver services that have promise to achieve positive outcomes for youth, families, and communities.

Homeless youth has the same meaning as "homeless children and youths" in section 725(2) of the McKinney-Vento Education for Homeless Children and Youth Act of 2001 (42 U.S.C. 11434a(2)).

An *interim indicator* is a marker of achievement that demonstrates progress toward an outcome and is measured at least annually.

Interventions based on evidence are approaches to prevention or treatment that are validated by documented scientific evidence from randomized controlled trials, or quasi-experimental design studies or correlational studies, and that show positive effects (for randomized controlled trials and quasi-experimental design studies) or favorable associations (for correlational studies) on the primary targeted outcomes for populations or settings similar to those of the proposed pilot. The best evidence to support an applicant's proposed reform(s) and target population will be based on one or more randomized controlled trials. The next best evidence will be studies using a quasi-experimental design. Correlational analysis may also be used as evidence to support an applicant's proposed reforms.

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.,* the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Outcomes are the intended results of a program, or intervention. They are what applicants expect their projects to achieve. An outcome can be measured at the participant level (for example, changes in employment retention or earnings of disconnected youth) or at the system level (for example, improved efficiency in program operations or administration).

A *qualified independent evaluator* is an individual who coordinates with the grantee and the lead Federal agency for the pilot, but works independently on the evaluation and has the capacity to carry out the evaluation, including, but not limited to: Prior experience conducting evaluations of similar design (for example, for randomized controlled trials, the evaluator will have successfully conducted a randomized controlled trial in the past); positive past performance on evaluations of a similar design, as evidenced by past performance reviews submitted from past clients directly to the awardee; lead staff with prior experience carrying out a similar evaluation; lead staff with minimum credential (such as a Ph.D. plus three years of experience conducting evaluations of a similar nature, or a Master's degree plus seven years of experience conducting evaluations of a similar nature); and adequate staff time to work on the evaluation.

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[20] To the extent feasible and consistent with applicable privacy requirements, grantees must also ensure the data from their evaluations are made available to third-party researchers.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards (as defined in this notice) with reservations (but not What Works Clearinghouse Evidence Standards without reservations).

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcome for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards (as defined in this notice) without reservations.

A *rural community* is a community that is served only by one or more local educational agencies (LEAs) that are currently eligible under the Department of Education's Small, Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under the Elementary and Secondary Education Act of 1965 (ESEA), as amended, or includes only schools designated by the National Center for Education Statistics (NCES) with a locale code of 42 or 43.

A *waiver* provides flexibility in the form of relief, in whole or in part, from specific statutory, regulatory, or administrative requirements that have hindered the ability of a State, locality, or tribe to organize its programs and systems or provide services in ways that best meet the needs of its target populations. Under P3, waivers provide flexibility in exchange for a pilot's commitment to improve programmatic outcomes for disconnected youth consistent with underlying statutory authorities and purposes.

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: *//ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

Program Authority: Section 219 of Division B, section 525 of Division H, and section 242 of Division L of the 2016 Appropriations Act.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99, and such other regulations as the Agencies may apply based on the programs included in a particular pilot. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Promise Zones NFP. (e) The P3 NFP.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: Up to $2,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $200,000 to $250,000.

Estimated Average Size of Award: $200,000.

Estimated Number of Awards: 10.

Note: The Agencies are not bound by any estimates in this notice. ED may supplement one or more awards above the amount requested in the application if funds remain after ED has made awards to all of the pilots.

Project Period: Not to extend beyond September 30, 2020.

III. Eligibility Information

1. *Eligible Applicants:* The lead applicant must be a State, local, or tribal government entity, represented by a Chief Executive, such as a governor, mayor, or other elected leader, or the head of a State, local, or tribal agency.

2. *Cost-Sharing or Matching:* This program does not require cost-sharing or matching.

3. *Eligible Subgrantees:* (a) Under 34 CFR 75.708(b) and (c) a grantee may award subgrants—to directly carry out project activities described in its application—to the following types of entities: State governmental agencies; local governmental agencies, including LEAs; tribal governmental agencies; institutions of higher education; and nonprofit organizations.

(b) The grantee may only award subgrants to entities it has identified in an approved application.

IV. Application and Submission Information

1. *Address to Request Application Package:* Braden Goetz, U.S. Department of Education, 400 Maryland Avenue SW., Room 11141, Potomac Center Plaza (PCP), Washington, DC 20202. Telephone: (202) 245–7405 or by email: *disconnectedyouth@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting either of the program contact persons listed in this section.

2. a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Submit an Application: September 14, 2016.

Note: Submission of a notice of intent to apply is optional. We will be able to develop a more efficient process for reviewing applications if we know the approximate number of applicants that intend to apply under this competition. Therefore, we strongly encourage each potential applicant to notify us of the applicant's intent to apply by emailing to *disconnectedyouth@ed.gov* the following information: (1) The applicant organization's name and address and (2) the absolute priority the applicant intends to address. Applicants that do not submit a notice of intent to apply may still submit an application.

Page Limit: The application narrative is where you, the applicant, provide the information specified in the application requirements and address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 45 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit for the application narrative does not apply to the budget and budget narrative, the assurances and certifications, the abstract, the absolute and competitive preference priorities, the resumes, the summary evaluation plan and supplementary evaluation budget narrative for applicants responding to Competitive Preference Priority 4, the evaluation commitment form, or the letters of commitment and memoranda of understanding. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application narrative that exceed the page limit.

b. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for P3, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define "business information" and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, and may make all applications available, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information, please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: August 15, 2016.

Deadline for Notice of Intent to Apply: September 29, 2016.

Note: Submission of a notice of intent to apply is optional.

Deadline for Transmittal of Applications: October 31, 2016.

Applications must be submitted electronically using the Grants.gov Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remain subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: December 28, 2016.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov.*

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov,* you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the P3 program, CFDA number 84.420A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for P3 at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.420, not 84.420A).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov,* we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov,* please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov,* the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov,* it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov,* please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov,* along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Braden Goetz, U.S. Department of Education, 400 Maryland Avenue SW., Room 11141, PCP, Washington, DC 20202. FAX: (202) 245–7838.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.420A, LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.420A, 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria.* The selection criteria for this competition and any subsequent year for which we make awards from the list of unfunded applications from this competition are from the P3 NFP.

The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to 100 points based on the selection criteria. An applicant's final score will include both points awarded based on selection criteria and also any points awarded for the competitive preference priorities.

Selection Criteria

(a) *Need for Project.* In determining the need for the proposed project, we will consider the magnitude of the need of the target population, as evidenced by the applicant's analysis of data, including data from a comprehensive needs assessment conducted or updated in the past three years, using representative data on youth from the jurisdiction(s) proposing the pilot, that demonstrates how the target population lags behind other groups in achieving positive outcomes and the specific risk factors for this population (5 points).

Note: Applicants are encouraged to disaggregate these data according to relevant demographic factors such as race, ethnicity, gender, age, disability status, involvement in systems such as foster care or juvenile justice, status as pregnant or parenting, and other key factors selected by the applicant. If disaggregated data specific to the local population are not available, applicants may refer to disaggregated data available through research, studies, or other sources that describe similarly situated populations as the one the applicant is targeting with its pilot.

Note: Applicants do not need to include a copy of the needs assessment but should identify when it was conducted or updated.

(b) *Need for Requested Flexibility, Including Blending of Funds and Other Waivers.* In determining the need for the requested flexibility, including blending of funds and other waivers, we will consider:

1. The strength and clarity of the applicant's justification that each of the specified Federal requirements identified in Table 2 for which the applicant is seeking flexibility hinders implementation of the proposed pilot (10 points); and

2. The strength and quality of the applicant's justification of how each request for flexibility identified in Table 2 (*i.e.,* blending funds and waivers) will increase efficiency or access to services and produce significantly better outcomes for the target population(s) (10 points).

(c) *Project Design.* In determining the strength of the project design, we will consider:

1. The strength and logic of the proposed project design in addressing the gaps and the disparities identified in the response to Selection Criterion (a) (Need for Project) and the barriers identified in the response to Selection Criterion (b) (Need for Requested Flexibility, Including Blending of Funds and Other Waivers). This includes the clarity of the applicant's plan and how the plan differs from current practices. Scoring will account for the strength of both the applicant's narrative and the logic model (10 points);

Note: The applicant's narrative should describe how the proposed project will use and coordinate resources, including building on participation in any complementary Federal initiatives or efforts.

2. The strength of the evidence supporting the pilot design and whether the applicant proposes the effective use of interventions based on evidence and evidence-informed interventions (as defined in this notice), as documented by citations to the relevant evidence that informed the applicant's design (5 points);

Note: Applicants should cite the studies on interventions and system reforms that informed their pilot design and explain the relevance of the cited evidence to the proposed project in terms of subject matter and evaluation evidence. Applicants proposing reforms on which there are not yet evaluations (such as innovations that have not been formally tested or tested only on a small scale) should document how evidence or practice knowledge informed the proposed pilot design.

3. The strength of the applicant's evidence that the project design, including any protections and safeguards that will be established, ensures that the consequences or impacts of the changes from current practices in serving youth through the proposed funding streams:

A. Will not result in denying or restricting the eligibility of individuals for services that (in whole or in part) are otherwise funded by these programs; and

B. Based on the best available information, will not otherwise adversely affect vulnerable populations that are the recipients of those services (5 points).

(d) *Work Plan and Project Management.* In determining the strength of the work plan and project management, we will consider the strength and completeness of the work plan and project management approach and their likelihood of achieving the objectives of the proposed project on time and within budget, based on—

1. Clearly defined and appropriate responsibilities, timelines, and milestones for accomplishing project tasks;

2. The qualifications of project personnel to ensure proper management of all project activities;

3. How any existing or anticipated barriers to implementation will be overcome (10 points).

Note: If the program manager or other key personnel are already on staff, the applicant should provide this person's resume or curriculum vitae.

Note: Evaluation activities may be included in the timelines provided as part of the work plan.

(e) *Partnership Capacity.* In determining the strength and capacity of the proposed pilot partnership, we will consider the following factors—

1. How well the applicant demonstrates that it has an effective governance structure in which partners that are necessary to implement the pilot successfully are represented and have the necessary authority, resources, expertise, and incentives to achieve the pilot's goals and resolve unforeseen issues, including by demonstrating the extent to which, and how, participating partners have successfully collaborated to improve outcomes for disconnected youth in the past (10 points);

2. How well the applicant demonstrates that its proposal was designed with substantive input from all relevant stakeholders, including disconnected youth and other community partners (5 points).

Note: Where the project design includes job training strategies, the extent of employer input and engagement in the identification of skills and competencies needed by employers, the development of the curriculum, and the offering of work-based learning opportunities, including pre-apprenticeship and registered apprenticeship, will be considered.

(f) *Data and Performance Management Capacity.* In determining the strength of the applicant's data and performance management capacity, we will consider the following factors—

1. The applicant's capacity to collect, analyze, and use data for decision-making, learning, continuous improvement, and accountability, and the strength of the applicant's plan to bridge any gaps in its ability to do so. This capacity includes the extent to which the applicant and partner organizations have tracked and shared data about program participants, services, and outcomes, including the execution of data-sharing agreements that comport with Federal, State, and other privacy laws and requirements, and will continue to do so (10 points);

2. How well the proposed outcome measures, interim indicators, and measurement methodologies specified in Table 4 of the application appropriately and sufficiently gauge results achieved for the target population under the pilot (10 points); and

3. How well the data sources specified in Table 4 of the application can be appropriately accessed and used to reliably measure the proposed outcome measures and interim indicators (5 points).

(g) *Budget and Budget Narrative.* In determining the adequacy of the resources that will be committed to support the project, we will consider the appropriateness of expenses within the budget with regards to cost and to implementing the pilot successfully. We will consider the entirety of funds the applicant will use to support its pilot including start-up grant funds, blended and braided funds included in Table 5, and non-Federal funds including in-kind contributions. (5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of

Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

The Department will screen applications that are submitted in accordance with the requirements in this notice, and will determine which applications are eligible to be read based on whether they have met the eligibility and application requirements established by this notice.

The Department will use reviewers with knowledge and expertise on issues related to improving outcomes for disconnected youth to score the selection criteria. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and competitive review.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, based on the seven selection criteria listed in the *Selection Criteria* section of this notice.

In reviewing applications, all reviewers will score Competitive Preference Priority 1 (Improving Outcomes for Youth Who Are Unemployed and Out of School), while reviewers with expertise in evaluation will score Competitive Preference Priority 4 (Site-Specific Evaluation). The Department will assign three points for Competitive Preference Priority 2 (Work-Based Learning Opportunities) if the application proposes to provide all disconnected youth that will be served by the project with paid work-based learning opportunities, such as opportunities during the summer, which are integrated with academic and technical instruction. If you address Competitive Preference Priority 3, provide a HUD Form 50153 (Certification of Consistency with Promise Zone Goals and Implementation) that has been signed by an authorized Promise Zone official.

Technical scoring. Reviewers will read, prepare a written evaluation, and assign a technical score to the applications assigned to their panel, using the selection criteria provided in this notice, Competitive Preference Priorities 1 and 4, and the scoring rubric in Appendix B.

ED will then prepare a rank order of applications based on their technical scores.

Flexibility, including blending of funds and other waivers. Using this rank order, representatives of the Agencies that administer programs under which flexibility in Federal requirements is sought will evaluate whether the flexibility, including blending of funds and other waivers requested by top-scoring applicants, meets the statutory requirements for Performance Partnership Pilots and is otherwise appropriate. For example, if an applicant is seeking flexibility under programs administered by HHS and DOL, its requests for flexibility will be reviewed by HHS and DOL officials. Applicants may be asked to participate in an interview at this point in the process in order to clarify requests for flexibility and other aspects of their proposals.

For applicants that propose to include funds from FY 2016 competitive grants that have already been awarded, the flexibility review may include consideration of whether the scope, objectives, and target populations of the existing competitive grant award(s) are sufficiently and appropriately aligned with the proposed pilot. Any changes in terms and conditions of the existing competitive grant award(s) required for pilot purposes must be justified by the applicant. The Agencies will review those requests on a case-by-case basis.

If 25 or fewer eligible applications are received, the technical scoring and reviews of flexibility requests may be conducted concurrently.

Selecting finalists. Agency officials may recommend the selection of up to 10 projects as Performance Partnership Pilots. In accordance with 34 CFR 75.217(d) and in consultation with the other Agencies, the Secretary will select finalists after considering the rank ordering, the recommendations of the Agencies that administer the programs for which the applicants are seeking flexibility, and other information including an applicant's performance and use of funds and compliance history under a previous award under any Agency program. In selecting pilots, the Agencies may consider high-ranking applications meeting Absolute Priority 2, Absolute Priority 3, and Absolute Priority 4 separately to ensure that there is a diversity of pilots. In addition, as required by the Acts, each pilot must meet all statutory criteria.

For each finalist, ED and any other Agencies implicated in the pilot will negotiate a performance agreement. If a performance agreement cannot be finalized for any applicant, an alternative applicant may be selected as a finalist instead. The recommended projects will be considered finalists until performance agreements are signed by all parties, and pilot designation will be awarded only after finalization and approval of each finalist's performance agreement.

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition ED conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* As described earlier in this notice, the applicant must propose outcome measures and interim indicators to gauge pilot performance using Table 4. At least one outcome measure must be in the domain of education, and at least one outcome measure must be in the domain of employment. Applicants may specify additional employment and education outcome measures, as well as outcome measures in other domains of well-being, such as criminal justice, physical and mental health, and housing. Regardless of the outcome domain, applicants must identify at least one interim indicator for each proposed outcome measure. Applicants must indicate the source of the data for each outcome measure and interim indicator, the proposed frequency of collection, and the methodology used to collect the data. Outcome measures and interim indicators, along with the required reporting frequency for each, will be outlined in P3 performance agreements.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Braden Goetz, U.S. Department of Education, 400 Maryland Avenue SW., Room 11141, PCP, Washington, DC 20202. Telephone: (202) 245–7405 or by email: *disconnectedyouth@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to either of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 9, 2016.

Johan E. Uvin,

Deputy Assistant Secretary, Delegated the Duties of the Assistant Secretary for Career, Technical, and Adult Education.

Appendix A: Evaluation Commitment Form

Appendix B: Scoring Rubric

Appendix A: Evaluation Commitment Form

An authorized executive of the lead applicant and all other partners, including State, local, tribal, and non-governmental organizations that would be involved in the pilot's implementation, must sign this form and submit it as an attachment to the grant application. The form is not considered in the recommended application page limit.

Commitment To Participate in Required Evaluation Activities

As the lead applicant or a partner proposing to implement a Performance Partnership Pilot through a Federal grant, I/we agree to carry out the following activities, which are considered evaluation requirements applicable to all pilots:

Facilitate Data Collection: I/we understand that the award of this grant requires me/us to facilitate the collection and/or transmission of data for evaluation and performance monitoring purposes to the lead Federal agency and/or its national evaluator in accordance with applicable Federal, State, and local, and tribal laws, including privacy laws.

The type of data that will be collected includes, but is not limited to, the following:

- Demographic information, including participants' gender, race, age, school status, and employment status;
- Information on the services that participants receive; and
- Outcome measures and interim outcome indicators, linked at the individual level, which will be used to measure the effects of the pilots.

The lead Federal agency will provide more details to grantees on the data items required for performance and evaluation after grants have been awarded.

Participate in Evaluation: I/we understand that participation and full cooperation in the national evaluation of the Performance Partnership Pilot is a condition of this grant award. I/we understand that the national evaluation will include an implementation systems analysis and, for certain sites as appropriate, may also include an impact evaluation. My/our participation will include facilitating site visits and interviews; collaborating in study procedures, including random assignment, if necessary; and transmitting data that are needed for the evaluation of participants in the study sample, including those who may be in a control group.

Participate in Random Assignment: I/we agree that if our Performance Partnership Pilot or certain activities in the Pilot is selected for an impact evaluation as part of the national evaluation, it may be necessary to select participants for admission to Performance Partnership Pilot by a random lottery, using procedures established by the evaluator.

Secure Consent: I/we agree to include a consent form for, as appropriate, parents/guardians and students/participants in the application or enrollment packet for all youth in organizations implementing the Performance Partnership Pilot consistent with any Federal, State, local, and tribal laws that apply. The parental/participant consent forms will be collected prior to the acceptance of participants into Performance Partnership Pilot and before sharing data with the evaluator for the purpose of evaluating the Performance Partnership Pilot.

SIGNATURES

Lead Applicant
Print Name
Signature
Organization
Date
Partner
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Appendix B: Scoring Rubric

Reviewers will assign points to an application for each selection sub-criterion, as well as for Competitive Preference Priorities 1 (Improving Outcomes for Youth Who Are Unemployed and Out of School) and 4 (Site-Specific Evaluation). In awarding points for Competitive Preference Priority 1, reviewers will make case-by-case determinations as to how well a particular application meets both parts of the priority. For example, more points may be awarded to an application proposing to serve a higher percentage of disconnected youth who are neither employed nor enrolled in education and who face significant barriers to accessing education and employment, and is likely to result in significantly better educational or employment outcomes for such youth based on the strength of the evidence base and/or logic model underlying the applicant's project design. ED will assign three points to an application for Competitive Preference Priority 2 (Work-Based Learning Opportunities) if the application proposes to provide all disconnected youth that will be served by the project with paid work-based learning opportunities, such as opportunities during the summer, which are integrated with academic and technical instruction. ED will assign two points for Competitive Preference Priority 3 (Promise Zones) to an application if the application includes a HUD Form 50153 (Certification of Consistency with Promise Zone Goals and Implementation) that has been signed by an authorized Promise Zone official. In awarding points under Competitive Preference Priority 4 (Site-Specific Evaluation), reviewers will consider the clarity and feasibility of the applicant's proposed evaluation design, the appropriateness of the design to best capture key pilot outcomes, the prospective contribution of the evaluation to the knowledge base about serving disconnected youth (including the rigor of the design and the validity and generalizability of the findings), and the applicant's demonstrated expertise in planning and conducting a randomized controlled trial or quasi-experimental evaluation design study. To help promote consistency across and within the panels that will review P3 applications, the Department has created a scoring rubric for reviewers to aid them in scoring applications.

The scoring rubric below shows the maximum number of points that may be assigned to each criterion, sub-criterion, and competitive preference priority.

Selection criteria	Sub-criterion points	Criterion points
(a) Need for Project. In determining the need for the proposed project, we will consider the magnitude of the need of the target population, as evidenced by the applicant's analysis of data, including data from a comprehensive needs assessment conducted or updated within the past three years, using representative data on youth from the jurisdiction(s) proposing the pilot, that demonstrates how the target population lags behind other groups in achieving positive outcomes and the specific risk factors for this population	....	5
(b) Need for Requested Flexibility, Including Blending of Funds and Other Waivers. In determining the need for the requested flexibility, including blending of funds and other waivers, we will consider:	....	20
(b)1. The strength and clarity of the applicant's justification that each of the specified Federal requirements identified in Table 2 for which the applicant is seeking flexibility hinders implementation of the proposed pilot; and	10	....
(b)2. The strength and quality of the applicant's justification of how each request for flexibility identified in Table 2 (i.e., blending funds and waivers) will increase efficiency or access to services and produce significantly better outcomes for the target population(s)	10	....
(c) Project Design. In determining the strength of the project design, we will consider:	....	20
(c)1. The strength and logic of the proposed project design in addressing the gaps and the disparities identified in the response to Selection Criterion (a) (Need for Project) and the barriers identified in the response to Selection Criterion (b) (Need for Requested Flexibility, Including Blending of Funds and Other Waivers). This includes the clarity of the applicant's plan and how the plan differs from current practices. Scoring will account for the strength of both the applicant's narrative and the logic model;	10	....
(c)2. The strength of the evidence supporting the pilot design and whether the applicant proposes the effective use of interventions based on evidence and evidence-informed interventions (as defined in this notice) as documented by citations to the relevant evidence that informed the applicant's design;	5	....
(c)3. The strength of the applicant's evidence that the project design, including any protections and safeguards that will be established, ensures that the consequences or impacts of the changes from current practices in serving youth through the proposed funding streams: A. Will not result in denying or restricting the eligibility of individuals for services that (in whole or in part) are otherwise funded by these programs; and B. Based on the best available information, will not otherwise adversely affect vulnerable populations that are the recipients of those services.	5	....
(d) Work Plan and Project Management. In determining the strength of the work plan and project management, we will consider the strength and completeness of the work plan and project management approach and their likelihood of achieving the objectives of the proposed project on time and within budget, based on— 1. Clearly defined and appropriate responsibilities, timelines, and milestones for accomplishing project tasks; 2. The qualifications of project personnel to ensure proper management of all project activities; 3. How any existing or anticipated barriers to implementation will be overcome.	....	10
(e) Partnership Capacity. In determining the strength and capacity of the proposed pilot partnership, we will consider the following factors—	....	15
(e)1. How well the applicant demonstrates that it has an effective governance structure in which partners that are necessary to implement the pilot successfully are represented and have the necessary authority, resources, expertise, and incentives to achieve the pilot's goals and resolve unforeseen issues, including by demonstrating the extent to which, and how, participating partners have successfully collaborated to improve outcomes for disconnected youth in the past;	10	....
(e)2. How well the applicant demonstrates that its proposal was designed with substantive input from all relevant stakeholders, including disconnected youth and other community partners.	5	....
(f) Data and Performance Management Capacity. In determining the strength of the applicant's data and performance management capacity, we will consider the following factors—	....	25
(f)1. The applicant's capacity to collect, analyze, and use data for decision-making, learning, continuous improvement, and accountability, and the strength of the applicant's plan to bridge any gaps in its ability to do so. This capacity includes the extent to which the applicant and partner organizations have tracked and shared data about program participants, services, and outcomes, including the execution of data-sharing agreements that comport with Federal, State, and other privacy laws and requirements, and will continue to do so;	10	....
(f)2. How well the proposed outcome measures, interim indicators, and measurement methodologies specified in Table 4 of the application appropriately and sufficiently gauge results achieved for the target population under the pilot; and	10	....

Selection criteria	Sub-criterion points	Criterion points
(f)3. How well the data sources specified in Table 4 of the application can be appropriately accessed and used to reliably measure the proposed outcome measures and interim indicators.	5	
(g) Budget and Budget Narrative. In determining the adequacy of the resources that will be committed to support the project, we will consider the appropriateness of expenses within the budget with regards to cost and to implementing the pilot successfully. We will consider the entirety of funds the applicant will use to support its pilot including start-up grant funds, blended and braided funds included in Table 5, and non-Federal funds including in-kind contributions.		5
Total		100

Competitive preference priorities for applications	Points
Competitive Preference Priority 1: Improving Outcomes for Youth Who Are Unemployed and Out of School.	
To meet this priority, an applicant must propose a pilot that—	
(1) will serve disconnected youth who are neither employed nor enrolled in education and who face significant barriers to accessing education and employment; and	
(2) is likely to result in significantly better educational or employment outcomes for such youth	5
Competitive Preference Priority 2: Work-Based Learning Opportunities.	
To meet this priority, an applicant must propose a pilot that will provide all of the disconnected youth it proposes to serve with paid work-based learning opportunities, such as opportunities during the summer, which are integrated with academic and technical instruction	3
Competitive Preference Priority 3: Promise Zones.	
This priority is for projects that are designed to serve and coordinate with a federally designated Promise Zone	2
Competitive Preference Priority 4: Site-Specific Evaluation.	
To meet this priority, an applicant must propose to conduct an independent evaluation of the impacts on disconnected youth of its overall program or specific components of its program that is a randomized controlled trial or a quasi-experimental design study. The extent to which an applicant meets this priority will be based on the clarity and feasibility of the applicant's proposed evaluation design, the appropriateness of the design to best capture key pilot outcomes, the prospective contribution of the evaluation to the knowledge base about serving disconnected youth (including the rigor of the design and the validity and generalizability of the findings), and the applicant's demonstrated expertise in planning and conducting a randomized controlled trial or quasi-experimental design study	10
Total	20

While case-by-case determinations will be made, the reviewers will be asked to consider the general ranges below as a guide when awarding points.

Maximum point value	Quality of response		
	Low	Medium	High
10	0–2	3–7	8–10
5	0–1	2–3	4–5

[FR Doc. 2016–19294 Filed 8–12–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket Number EERE–2013–BT–NOC–0005]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Public Meeting

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: The Department of Energy (DOE) is announcing a public meeting and webinar for the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: DOE will host a public meeting on Tuesday, October 18, 2016 from 10:00 a.m.–4:00 p.m. in Washington, DC.

ADDRESSES: The ASRAC public meeting will be held at the Navigant Offices, 1200 19th Street, Suite 700 NW., Washington, DC. To register for the webinar and receive call-in information, please register at: *https://attendee.gotowebinar.com/register/6302070073686810372.*

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza SW., Washington, DC 20024. Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is announcing a public meeting and webinar for ASRAC. Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

Issued in Washington, DC, on August 5, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–19362 Filed 8–12–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–164–000.
Applicants: Georgia Power Company.
Description: Application of Georgia Power Company Pursuant to Section 203 of the Federal Power Act for Authorization to Sell Certain Transmission Facilities and Request for Privileged and Confidential Treatment.
Filed Date: 8/8/16.
Accession Number: 20160808–5207.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: EC16–165–000.
Applicants: Broad River Energy LLC.
Description: Application for Authorization under Section 203 of the Federal Power Act of Broad River Energy LLC.
Filed Date: 8/8/16.
Accession Number: 20160808–5210.
Comments Due: 5 p.m. ET 8/29/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1211–003.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–08–09_SA 2906 Indianapolis Power & Light GIA (J401) Compliance to be effective 3/18/2016.
Filed Date: 8/9/16.
Accession Number: 20160809–5173.
Comments Due: 5 p.m. ET 8/30/16.

Docket Numbers: ER16–1990–000.
Applicants: North Star Solar PV LLC.
Description: Supplement to June 23, 2016 North Star Solar PV LLC tariff filing.
Filed Date: 7/26/16.
Accession Number: 20160726–5072.
Comments Due: 5 p.m. ET 8/16/16.

Docket Numbers: ER16–2394–000.
Applicants: Alabama Power Company.
Description: Compliance filing: Compliance Filing for Docket No. ER16–1773 to be effective 8/10/2016.
Filed Date: 8/9/16.
Accession Number: 20160809–5104.
Comments Due: 5 p.m. ET 8/30/16.

Docket Numbers: ER16–2395–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of ISAs, SA Nos. 3473 and 3474, Queue No. W3–066 to be effective 8/1/2016.
Filed Date: 8/9/16.
Accession Number: 20160809–5130.
Comments Due: 5 p.m. ET 8/30/16.

Docket Numbers: ER16–2396–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO 205 re: RS 1—Recovery of Shortfalls in Funding Annual Operating Costs to be effective 10/12/2016.
Filed Date: 8/9/16.
Accession Number: 20160809–5137.
Comments Due: 5 p.m. ET 8/30/16.

Docket Numbers: ER16–2397–000.
Applicants: Elevation Energy Group, LLC.
Description: Baseline eTariff Filing: Market-Based Rates Tariff to be effective 8/19/2016.
Filed Date: 8/9/16.
Accession Number: 20160809–5172.
Comments Due: 5 p.m. ET 8/30/16.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH16–11–000.
Applicants: Apollo Management VI, L.P.
Description: FERC 65B Notice of Material Change in Facts and FERC 65 Notification of Holding Company Status of Apollo Management VI, L.P.
Filed Date: 8/9/16.
Accession Number: 20160809–5110.
Comments Due: 5 p.m. ET 8/30/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19364 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2368–000]

New Creek Wind LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of New Creek Wind LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 29, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the

Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19333 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR15–5–002.
Applicants: Washington Gas Light Company.
Description: Tariff filing per 284.123/.224: Washington Gas Light Company Offer of Settlement in PR15–5 and RP15–238 to be effective 7/1/2016; Filing Type: 790.
Filed Date: 8/1/16.
Accession Number: 201608015112.
Comments/Protests Due: 5 p.m. ET 8/22/16.

Docket Number: PR16–64–000.
Applicants: Lobo Pipeline Company LLC.
Description: Tariff filing per 284.123(e) + (g): Lobo Pipeline Company LLC Statement of Operating Conditions to be effective 11/1/2016; Filing Type: 1280.
Filed Date: 8/1/2016.
Accession Number: 201608015068; *http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160630-5111; http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160415-5222.*
Comments Due: 5 p.m. ET 8/22/16.
284.123(g) Protests Due: 5 p.m. ET 9/30/16.

Docket Number: PR16–65–000.
Applicants: ETC KR Pipeline LLC.
Description: Tariff filing per 284.123(g)/.224: ETC KR Pipeline LLC Cancellation of General Terms and Conditions to be effective 11/1/2016; Filing Type: 1290.
Filed Date: 8/1/2016.
Accession Number: 201608015152; *http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160630-5111; http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160415-5222.*
Comments Due: 5 p.m. ET 8/22/16.
284.123(g) Protests Due: 5 p.m. ET 9/30/16.

Docket Number: PR16–66–000.
Applicants: J–W Pipeline Company.
Description: Tariff filing per 284.123(e) + (g): Aethon United Pipeline LP—Notice of Name Change to be effective 7/1/2016; Filing Type: 1280.
Filed Date: 8/1/2016.
Accession Number: 201608015193; *http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160630-5111; http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160415-5222.*
Comments Due: 5 p.m. ET 8/22/16.
284.123(g) Protests Due: 5 p.m. ET 9/30/16.

Docket Number: PR16–67–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: Tariff filing per 284.123(b)(1)/.: COH SOC to be effective 7/29/2016; Filing Type: 980.
Filed Date: 8/2/16.
Accession Number: 201608025103.
Comments/Protests Due: 5 p.m. ET 8/23/16.

Docket Numbers: RP16–1139–000.
Applicants: Boardwalk Storage Company, LLC.
Description: Filing Withdrawal: Withdraw Filing.
Filed Date: 8/3/16.
Accession Number: 20160803–5043.
Comments Due: 5 p.m. ET 8/15/16.

Docket Numbers: RP16–1159–000.
Applicants: Boardwalk Storage Company, LLC.
Description: § 4(d) Rate Filing: Cancellation of Second Revised Volume No. 1 (Tariff Reorg) to be effective 9/1/2016.
Filed Date: 8/3/16.
Accession Number: 20160803–5044.
Comments Due: 5 p.m. ET 8/15/16.

Docket Numbers: RP16–1160–000.
Applicants: SG Resources Mississippi, L.L.C.
Description: § 4(d) Rate Filing: SG Resources Mississippi, L.L.C.—Proposed Revisions to FERC Gas Tariff to be effective 9/3/2016.
Filed Date: 8/3/16.
Accession Number: 20160803–5087.
Comments Due: 5 p.m. ET 8/15/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 4, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19369 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RA16–3–000]

Avocent Corporation; Notice of Filing

Take notice that, on August 4, 2016, Avocent Corporation (Avocent) filed a Petition for Review of Denial of Adjustment Request, pursuant to section 504(b) of the Department of Energy Organization Act, 42 U.S.C. 7194(b), and section 385.1004 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 385.1004. Avocent's petition requests review of the July 5, 2016 Decision and Order issued in Case Number EXC–16–0008 by the Department of Energy's Office of Hearings and Appeals. In addition, Avocent is concurrently requesting a hearing in accordance with section 385.1006 of the Commission's Rules of Practice and Procedure, 18 CFR 385.1006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 30, 2016.

Dated: August 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19367 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2370–000]

Freepoint Energy Solutions LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Freepoint Energy Solutions LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 29, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19334 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2276–000]

Kingman Wind Energy II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Kingman Wind Energy II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 29, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19330 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

Beacon Solar 1, LLC	EG16–90–000
Beacon Solar 3, LLC	EG16–91–000
Beacon Solar 4, LLC	EG16–92–000
Rio Bravo Solar I, LLC	EG16–93–000
Rio Bravo Solar II, LLC	EG16–94–000
Wildwood Solar II, LLC	EG16–95–000
Marshall Solar, LLC	EG16–96–000
River Bend Solar, LLC	EG16–97–000
Paulding Wind Farm III LLC	EG16–98–000
Lindahl Wind Project, LLC	EG16–99–000
Chisholm View Wind Project II, LLC	EG16–100–000
Drift Sand Wind Project, LLC	EG16–101–000
Aurora Generation, LLC	EG16–102–000
Tropico, LLC	EG16–103–000
Nicolis, LLC	EG16–104–000
Portal Ridge Solar B, LLC	EG16–105–000
63SU 8ME LLC	EG16–106–000
Eastern Shore Solar, LLC	EG16–107–000
Deepwater Wind Block Island, LLC	EG16–108–000

Take notice that during the month of July 2016, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: August 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19328 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Transcameron Pipeline Project and Calcasieu Pass Terminal, and Request for Comments on Environmental Issues Related To New Route Amendments and Project Changes

TransCameron Pipeline, LLC	Docket Nos. CP15–551–001
Venture Global Calcasieu Pass, LLC	CP15–550–000

On September 4, 2015, TransCameron Pipeline, LLC (TransCameron Pipeline) filed an application in Docket No. CP15–551–000, pursuant to Section 7 of the Natural Gas Act, as amended, and Part 157 of the Commission's regulations for authorization to construct, install, own, operate and maintain two lateral pipelines (the East Lateral and the West Lateral pipeline) and appurtenant facilities located in Cameron Parish, Louisiana that comprise the TransCameron Pipeline Project (TransCameron Pipeline or Project). The Project application was filed jointly with an application by Venture Global Calcasieu Pass, LLC (Venture Global Calcasieu Pass) for authorization to construct and operate a liquefied natural gas (LNG) storage and marine export terminal, the Calcasieu Pass Terminal, and related facilities, in Cameron Parish (Docket No. CP15–550–000).

Venture Global Calcasieu Pass filed modifications to the Calcasieu Pass Terminal facilities on March 21, 2016. And, on June 28, 2016, TransCameron Pipeline filed an amendment to its application with additional project changes. The combined changes are detailed below, and an overview map of the Project is provided in appendix 1. This Supplemental Notice is being issued to seek comments on the amendment and other changes, and to open a new scoping period for interested parties to file comments on environmental issues.

Information about the facilities proposed by TransCameron Pipeline and Venture Global Calcasieu Pass can be found on the Commission's public Docket Nos. CP15–551–001, and CP15–550–000, respectively, and on the applicant's Web site at *http://venturegloballng.com/calcasieu-pass.* The FERC's environmental impact statement (EIS) will encompass all proposed facilities and be used by the Commission in its decision-making process to determine whether to approve the TransCameron Pipeline Project and Calcasieu Pass Terminal.

The FERC will be the lead federal agency for the preparation of the EIS. The U.S. Army Corps of Engineers, U.S. Department of Energy, U.S. Coast Guard, U.S. Department of Transportation, and U.S. Environmental Protection Agency are cooperating agencies in the preparation of the EIS.

We[1] are seeking comments on the project modifications to help the Commission staff determine what issues need to be evaluated in the EIS. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts from the proposed modifications. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before September 1, 2016. If you have previously provided comments on the TransCameron Pipeline Project or Calcasieu Pass Terminal, you do not need to resubmit them. State and local government representatives are asked to notify their constituents of this proposed Project amendment/modification and encourage them to comment on their areas of concern.

This Supplemental Notice is being sent to the Commission's current environmental mailing list for this project, including those landowners that might be newly affected by the proposed pipeline modifications, and those no longer directly affected due to the reduction in proposed facilities. Landowners previously affected by the West Lateral should note that it is no longer being proposed. If you wish to be removed from the mailing list, please respond either electronically (information on filing electronically is provided below) or through the attached Information Request (appendix 2).

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[1] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

If you are a newly affected landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if the easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of Project Modifications

TransCameron Pipeline and Venture Global Calcasieu Pass have made the following Project modifications, filed in a March 21, 2016 supplement and June 28, 2016 amendment:

- Elimination of the West Lateral Pipeline and its associated facilities (meter station, mainline valves, access roads, and contractor yard) reducing the overall project workspace of TransCameron Pipeline's proposal from 637.6 acres to 372.2 acres;
- minor workspace and layout modifications, including additional access roads, and a contractor yard on the East Lateral Pipeline;
- reduction of the Terminal Site area from 393.7 acres to 268.4 acres through layout redesign;
- redesign and relocation of the two 200,000 cubic meters LNG aboveground storage tanks, including replacement of full containment with single containment design and addition of LNG retention basins;
- redesign of the piling system for LNG dock facilities;
- reduction of the number of integrated pre-cooled SMR liquefaction blocks located at the Terminal Site from ten to nine, while maintaining the same output capability;
- relocation of the administration/security building complex;
- removal of the construction utility dock from proposed Terminal design;
- addition of three off-site construction support facilities (Martin Support Facility, DeHyCo Support Facility, and Baker Hughes Support Facility) at existing marine industrial facilities on Calcasieu Pass;
- addition of two temporary access roads to provide access to the DeHyCo and Martin Support Facilities;
- increase in width of the Northeast Access Road from 50 to 125 feet from the intersection of the Martin Access Road to the Terminal's perimeter berm, and from 50 to 75 feet from the Liberty Support Facility to the intersection of the Martin Access Road;
- addition of one off-site facility (Mudd Support Facility) to provide parking space and a point of access to a private ferry that would carry construction personnel across the Calcasieu Ship Channel during construction;
- addition of a service road (Southwest Service Road) at the Terminal to provide restricted access to Cameron Parish's Jetty Pier Facility; and
- redesign of the Terminal's flood protection structure, replacing the earthen berm along the full perimeter of the plant site with an earthen berm on the west side and a steel pile floodwall on the east, north, and south sides. The berm will include the Northwest Access Road ramp. The floodwall would be +31.5 feet North American Vertical Datum of 1988 (NAVD 88); the berm would be +26 feet NAVD 88, with a sliding flood gate over the ramp to bring the height to +31.5 feet NAVD 88.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of an Authorization or Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. We will consider all filed comments during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the proposed projects under these general headings:

- Geology and soils;
- land use;
- socioeconomics;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- reliability and safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 4.

The Cooperating Agencies also have responsibilities under NEPA and can adopt the EIS for their own agency's purposes.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposed amendments to the TransCameron Pipeline Project or the modifications to the Calcasieu Pass Terminal facilities. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington DC on or before September 1, 2016. If you have previously provided comments on the TransCameron Pipeline Project or Calcasieu Pass Terminal, you do not need to resubmit them.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the appropriate project docket number (CP15–551–001 for the TransCameron Pipeline Project; CP15–550–000 for the Calcasieu Pass Terminal) with your submission. The Commission will provide equal consideration to all comments received. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing;" or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, as well as anyone who submits comments on the projects. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned projects.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the TransCameron Pipeline Project and the Calcasieu Pass Terminal is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number, excluding the last three digits (*i.e.,* CP15–551 or CP15–550). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 2, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19370 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 3251–009]

Cornell University; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 3251–009.

c. *Date Filed:* June 29, 2016.

d. *Submitted by:* Cornell University.

e. *Name of Project:* Cornell University Hydroelectric Project.

f. *Location:* On Fall Creek, a tributary to Cayuga Lake, in the City of Ithaca in Tompkins County, New York. The project does not occupy federal land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. W.S. "Lanny" Joyce, Director of Utilities and Energy Management, Cornell University, Energy and Sustainability, Humphreys Service Building, Room 135, Ithaca, NY 14583–3701, (607) 255–6631; email—*wsj1@cornell.edu.*

i. *FERC Contact:* Chris Millard at (202) 502–8256; or email at *christopher.millard@ferc.gov.*

j. Cornell University filed a request to use the Traditional Licensing Process on June 29, 2016. Cornell University provided public notice of the request on July 12, 2016. In a letter dated August 9, 2016, the Director of the Division of Hydropower Licensing approved Cornell University's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New York State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Cornell University as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Cornell University filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 3251–009. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2019.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: August 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19365 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2275–000]

Kingman Wind Energy I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Kingman Wind Energy I, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 29, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19329 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2278–000]

Cube Yadkin Generation LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Cube Yadkin Generation LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 29, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19332 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3273–022]

Chittenden Falls Hydropower, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 3273–022.

c. *Date Filed:* May 31, 2016.

d. *Submitted By:* Chittenden Falls Hydropower, Inc.

e. *Name of Project:* Chittenden Falls Hydroelectric Project.

f. *Location:* On Kinderhook Creek, in Columbia County, Stockport, New York. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Jonathan Miller, Chittenden Falls Hydropower, Inc., c/o Gravity Renewables, Inc., 1401 Walnut Street, Suite 220, Boulder, CO 80302; (303) 615–3102; *info@gravityrenewables.com.*

i. *FERC Contact:* Gaylord Hoisington (202) 502–6032; or email at *gaylord.hoisington@ferc.gov.*

j. Chittenden Falls Hydropower, Inc. filed its request to use the Traditional Licensing Process on May 31, 2016. Chittenden Falls Hydropower, Inc. provided public notice of its request on June 10, 2016, in the Columbia County newspaper. In a letter dated August 9, 2016, the Director of the Division of Hydropower Licensing approved Chittenden Falls Hydropower, Inc.'s request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New York State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Chittenden Falls Hydropower, Inc. as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Chittenden Falls Hydropower, Inc. filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 3273–022. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 2019.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: August 09, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19366 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2277–000]

Solar Star California XLI, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Solar Star California XLI, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 29, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19331 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–163–000.
Applicants: Bucksport Mill LLC, Bucksport Generation LLC.
Description: Application under FPA Section 203 for Authorization of Intracorporate Transfer of Jurisdictional Assets, et al. of Bucksport Mill LLC.
Filed Date: 8/5/16.
Accession Number: 20160805–5244.
Comments Due: 5 p.m. ET 8/26/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–132–000.
Applicants: Desert Wind Farm LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Desert Wind Farm LLC.
Filed Date: 8/8/16.
Accession Number: 20160808–5129.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: EG16–133–000.
Applicants: Innovative Solar 31, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Innovative Solar 31, LLC.
Filed Date: 8/8/16.
Accession Number: 20160808–5185.
Comments Due: 5 p.m. ET 8/29/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1649–005.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2016–08–05 Petition for Extension of Ltd Tariff Waiver to Suspend Effective Date to be effective N/A.
Filed Date: 8/5/16.
Accession Number: 20160805–5192.
Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER16–2372–001.
Applicants: ITC Midwest LLC.
Description: Tariff Amendment: Errata to Filing of Master Joint Use Pole Agreement to be effective 10/4/2016.
Filed Date: 8/8/16.
Accession Number: 20160808–5154.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2387–000.
Applicants: Bounce Energy NY, LLC.
Description: Tariff Cancellation: Cancellation to be effective 8/31/2016.
Filed Date: 8/5/16.
Accession Number: 20160805–5197.
Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER16–2388–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Filing of Notice of Termination of ITC Midwest RS 139 to be effective 7/15/2016.
Filed Date: 8/8/16.
Accession Number: 20160808–5146.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2389–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: First Amended CLGIA and First Amended Svc Agmt for Windhub Solar Project to be effective 8/9/2016.
Filed Date: 8/8/16.
Accession Number: 20160808–5150.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2390–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2016–08–08 SA 2933 ITCTransmission-Michigan Wind 3 GIA (J321) to be effective 8/9/2016.
Filed Date: 8/8/16.
Accession Number: 20160808–5152.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2391–000.
Applicants: ANP Marketing Company.
Description: Notice of Cancellation of ANP Marketing Company.
Filed Date: 8/8/16.
Accession Number: 20160808–5181.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2392–000.
Applicants: Sierra Pacific Power Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 69—Concurrence SPPC RS 69 to SCE RS 310 to be effective 8/5/2016.
Filed Date: 8/8/16.
Accession Number: 20160808–5190.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2393–000.
Applicants: Innovative Solar 31, LLC.
Description: Baseline eTariff Filing: Innovative Solar 31, LLC MBR Tariff to be effective 8/9/2016.
Filed Date: 8/8/16.
Accession Number: 20160808–5195.
Comments Due: 5 p.m. ET 8/29/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–46–000.
Applicants: Community Wind North, LLC.
Description: Request for Waivers and Blanket Authorization.
Filed Date: 7/22/16.
Accession Number: 20160722–5206.
Comments Due: 5 p.m. ET 8/12/16.

Docket Numbers: ES16–50–000.
Applicants: Southwest Power Pool, Inc.
Description: Application of Southwest Power Pool, Inc. Under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Securities.
Filed Date: 8/5/16.
Accession Number: 20160805–5217.
Comments Due: 5 p.m. ET 8/26/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19327 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP15–17–000	7–28–2016	WWALS Watershed Coalition, Inc.
2. CP13–483–000, CP13–492–000	8–1–2016	Clarence Adams and Jody McCaffree.
3. P–2082–027	8–1–2016	Collier Interpretive and Information Center.
4. CP13–483–000, CP13–492–000	8–3–2016	Clarence Adams.
5. CP16–22–000, CP16–23–000	8–8–2016	Terry J. Lodge.
Exempt:		
1. CP16–9–000	7–25–2016	U.S. Congress.[1]
2. P–1494–000	7–26–2016	U.S. House Representative Markwayne Mullin.
3. CP14–96–001	7–28–2016	State of New York Senator Roxanne J. Persaud.
4. CP15–88–000	7–28–2016	City of Danville, Kentucky Mayor G. Michael Perros.
5. CP14–96–002	7–28–2016	U.S. Congress.[2]
6. P–1494–433	7–29–2016	FERC Staff.[3]
7. CP14–96–000	7–29–2016	Town of Rehoboth, Massachusetts.
8. CP15–558–000	7–29–2016	U.S. House Representative Matt Cartwright.
9. P–2833–000	7–29–2016	U.S. House Representative Jaime Herrera Beutler.
10. P–1494–000	8–1–2016	U.S. House Representative Jim Bridenstine.
11. CP13–483–000, CP13–492–000	8–1–2016	Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians.
12. CP14–96–000	8–4–2016	U.S. Congress.[4]
13. CP15–514–000	8–4–2016	State of Ohio House Representative Clifford A. Rosenberger.
14. CP16–10–000	8–8–2016	FERC Staff.[5]

[1] Senators Edward J. Markey and Elizabeth Warren.

[2] U.S. House Representative Stephen Lynch. U.S. Senators Elizabeth Warren and Edward J. Markey. Boston, Massachusetts Mayor Martin J. Walsh. State of Massachusetts Senator Michael F. Rush. State of Massachusetts House Representatives Paul McMurtry and Edward F. Coppinger. Boston, Massachusetts District 6 Councilor Matt O'Malley.

[3] Memo reporting phone call on June 28, 2016 with Senator James Inhofe from Oklahoma.

[4] U.S. Senators Charles E. Schumer and Kirsten Gillibrand.

[5] Memo reporting phone call on August 5, 2016 with John Ross, Zoning Administrator for Giles County, Virginia.

Dated: August 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19368 Filed 8–12–16; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0710]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the

PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before September 14, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the "Supplementary Information" section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,*(2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0710.

Title: Policy and Rules Under Parts 1 and 51 Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996—CC Docket No. 96–98.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 15,282 respondents; 1,067,987 responses.

Estimated Time per Response: .50 hours–4,000 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1–4, 201–205, 214, 224, 251, 252, and 303(r) of the Communications Act of 1934, as amended, and section 601 of the Telecommunications Act of 1996. 47 U.S.C. 151–154, 201–205, 224, 251, 252, 303 (r), and 601.

Total Annual Burden: 645,798 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the respondents wish confidential treatment of their information, they may request confidential treatment under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission adopted rules to implement the First Report and Order on Reconsideration issued in CC Docket No. 96–98. That Order implemented parts of sections 251 and 252 of the Telecommunications Act of 1996 that affect local competition. Incumbent local exchange carriers (ILECs) are required to offer interconnection, unbundled network elements (UNEs), transport and termination, and wholesale rates for certain services to new entrants. Incumbent LECS must price such services and rates that are cost-based and just and reasonable and provide access to right-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer Office of Secretary.

[FR Doc. 2016–19382 Filed 8–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0175]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 14, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0175.

Title: Section 73.1250, Broadcasting Emergency Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 50 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 73.1250(e) states immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages under paragraph (b) of this section, or when daytime facilities were used during nighttime hours by an AM station in accordance with paragraph (f) of this section, a report in letter form shall be forwarded to the FCC in Washington, DC, setting forth the nature of the emergency, the dates and hours of the broadcasting of emergency information, and a brief description of the material carried during the emergency. A certification of compliance with the non-commercialization provision of paragraph (f) of this section must accompany the report where daytime facilities are used during nighttime hours by an AM station, together with a detailed showing, under the provisions of that paragraph, that no other broadcast service existed or was adequate.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary, Office of the Secretary.

[FR Doc. 2016–19307 Filed 8–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *David Ryan Feriancek, Saint Joseph, Minnesota;* to become a trustee of the Stearns Financial Services, Inc., Employee Stock Ownership Plan and Trust, Saint Cloud, Minnesota, (ESOP), and thereby indirectly acquire control of voting shares Stearns Financial Services, Inc., Saint Cloud, Minnesota (Stearns). Stearns controls Stearns Bank National Association, Saint Cloud, Minnesota, Stearns Bank of Upsala National Association, Upsala, Minnesota, and Stearns Bank of Holdingford National Association, Holdingford, Minnesota.

Board of Governors of the Federal Reserve System, August 9, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–19283 Filed 8–12–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 9, 2016.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *Commonwealth Holdings, LLC, Burlington, Kentucky;* to acquire 33 percent of the voting stock of Heritage Bancorp, Inc., Burlington, Kentucky, and thereby indirectly acquire control of Heritage Bank, Inc., Erlanger, Kentucky.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *River Holding Company, Stoddard, Wisconsin;* to merge with Sparta Union Bancshares, Inc., Sparta, Wisconsin and thereby indirectly acquire Union National Bank and Trust Company, Sparta, Wisconsin.

Board of Governors of the Federal Reserve System, August 9, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–19284 Filed 8–12–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 151 0000]

Fortiline, LLC; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 8, 2016.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/fortilineconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "In the Matter of Fortiline, LLC, File No. 151–0000—Consent Agreement" on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/fortilineconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write "In the Matter of Fortiline, LLC, File No. 151–0000—Consent Agreement" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mark Taylor (202–326–2287), Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 9, 2016), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 8, 2016. Write "In the Matter of Fortiline, LLC, File No. 151–0000—Consent Agreement" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/fortilineconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write "In the Matter of Fortiline, LLC, File No. 151–0000—Consent Agreement" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 8, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing consent order ("Consent Agreement") from Fortiline, LLC ("Fortiline"). The Commission's Complaint alleges that Fortiline violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by inviting a competing seller of ductile iron pipe ("DIP"), Manufacturer A, to raise and fix prices.

This is the first Commission challenge to an invitation to collude by a firm that is in both a horizontal (interbrand) and a vertical (intrabrand) relationship with the invitee, sometimes referred to as a dual distribution relationship. During the time-period relevant to the Complaint, Fortiline, a DIP distributor, sold DIP to customers in competition with Manufacturer A (principally a manufacturer, but also engaged in direct sales), while it also served as Manufacturer A's distributor in certain circumstances. Fortiline thus had a vertical distributor relationship with Manufacturer A in certain areas and circumstances and a horizontal competitor relationship with Manufacturer A in others. This case makes clear that the existence of an intrabrand relationship between firms does not immunize an invitation to fix prices for interbrand transactions falling outside of that intrabrand relationship just as the law would not condone an actual price fixing agreement under similar circumstances.

The Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order ("Proposed Order").

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

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[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

I. The Complaint

The allegations of the Complaint are summarized below:

Fortiline distributes waterworks infrastructure products, such as pipe (including DIP), tubing, valves, fittings and piping accessories. DIP is a commodity product used in underground waterworks distribution systems and water treatment plants. End users of DIP are primarily municipalities and water utilities. For a typical project, the end user seeks bids from multiple contractors. Contractors, in turn, solicit DIP bids from waterworks distributors (such as Fortiline) and/or directly from DIP manufacturers. Contractors that buy direct from DIP manufacturers often pay a lower price, but forgo value-added services that distributors provide.

Each of the major DIP manufacturers in the United States periodically publishes a nationwide "price list" or "pricing schedule." Sometimes, rather than publishing a new price list, a DIP manufacturer would announce a price adjustment stated in terms of a "multiplier," a decimal number by which the published price was multiplied to arrive at the new list price. A higher multiplier translated to a higher price for DIP. The price list and the multiplier would serve as the starting point for transaction price negotiations with customers; the final transaction price on each project was decided on a job-by-job basis.

From its founding in 1997 until late 2009, most Fortiline branches distributed only DIP manufactured by Manufacturer A. However, on or about December 14, 2009, Fortiline terminated Manufacturer A as its DIP supplier in North Carolina and in most of Virginia. After December 14, 2009, Fortiline branches in this area bid on new waterworks projects with DIP manufactured by Manufacturer B, a competitor of Manufacturer A.

After December 14, 2009, some Fortiline branches outside of North Carolina and in one part of Virginia continued to distribute Manufacturer A's DIP. In addition, even though Fortiline terminated Manufacturer A in North Carolina and in most of Virginia, Fortiline continued to supply Manufacturer A's DIP to contractors in that area as needed to complete projects where Fortiline had, prior to December 14, 2009, submitted a bid specifying Manufacturer A's DIP.

Fortiline's termination of Manufacturer A in North Carolina and most of Virginia left Manufacturer A without a major distributor in that region. In response, Manufacturer A began to market and sell DIP directly to contractors in North Carolina and most of Virginia, in competition with North Carolina and Virginia distributors and their DIP suppliers, including Fortiline and its new supplier, Manufacturer B.

Manufacturer A did not offer North Carolina and Virginia contractors the value-added services provided by distributors. In order to entice contractors to forgo those services and to buy directly from Manufacturer A, Manufacturer A offered lower prices. In response, Fortiline and other distributors (in conjunction with their DIP suppliers) reduced their own prices in order to compete with Manufacturer A's lower prices.

On two occasions in 2010, when Fortiline and Manufacturer A were competing against one another to sell DIP in North Carolina and most of Virginia, Fortiline invited Manufacturer A to collude on DIP pricing in that region.

On February 12, 2010, the chief executive officer and the vice president of sales for Fortiline met with Manufacturer A's vice president of sales. Among other things, they discussed Manufacturer A's practice of selling direct in North Carolina and most of Virginia at low prices.

That evening, Fortiline's vice president of sales forwarded to his counterpart at Manufacturer A an email reporting on market conditions in North Carolina. The email detailed Manufacturer A's practice of undercutting its competitors' prices. In contrast, the email reported, other major DIP manufacturers "have been trying to keep their numbers up thus far." The Fortiline email included the following commentary: "This is the type of irrational behavior [by Manufacturer A] that we were discussing earlier today. With this approach we will be at a .22 [multiplier] soon instead of a needed .42."

In substance, the February 12th email communicated Fortiline's dissatisfaction with Manufacturer A's low pricing in North Carolina and parts of Virginia and its preference that both Fortiline and Manufacturer A should bid to contractors using the higher .42 multiplier.

Eight months later, on October 26, 2010, executives from Fortiline and Manufacturer A met again, this time at a trade association meeting. At that meeting, Fortiline complained that Manufacturer A had sold direct to a Virginia customer, which had previously purchased from Fortiline, at a 0.31 multiplier, and that this price was "20% below market."

In substance, this October 26th conversation communicated Fortiline's dissatisfaction with Manufacturer A's lower pricing in Virginia, and its preference that both Fortiline and Manufacturer A should bid to contractors using a substantially higher multiplier in that region.

II. Analysis

The term "invitation to collude" describes an improper communication from a firm to an actual or potential competitor that the firm is ready and willing to coordinate on price or output or other important terms of competition. The Commission has long held that invitations to collude violate Section 5 of the FTC Act. An invitation to collude is "potentially harmful and . . . serves no legitimate business purpose."[1] For those reasons, the Commission treats such conduct as "inherently suspect" (that is, presumptively anticompetitive).[2] This means that, in the absence of a procompetitive justification, an invitation to collude can be condemned under Section 5 without a showing that the respondent possesses market power[3] and without proof that the competitor accepted the invitation.[4] There are various reasons for this. First, unaccepted solicitations may harm competition by facilitating coordination between competitors because they reveal information about the solicitor's intentions or preferences. Second, it can be difficult to discern whether a competitor has accepted a solicitation. Finally, finding a violation may deter similar conduct that has no legitimate business purpose.[5]

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[1] *In re Valassis Commc'ns., Inc.*, 141 F.T.C. 247, 283 (2006) (Analysis of Agreement Containing Consent Order to Aid Public Comment); *see also* Address by FTC Chairwoman Edith Ramirez, Section 5 Enforcement Principles, George Washington University Law School at 5 (Aug. 13, 2015) (discussing invitations to collude), *https://www.ftc.gov/system/files/documents/public_statements/735411/150813section5speech.pdf.*

[2] *See, e.g., In re North Carolina Bd. of Dental Examiners*, 152 F.T.C. 640, 668 (2011) (noting that inherently suspect conduct is such that be "reasonably characterized as 'giv[ing] rise to an intuitively obviously inference of anticompetitive effect' ").

[3] *See, e.g., In re Realcomp II, Ltd.*, 148 F.T.C. ____, No. 9320, 2009 FTC LEXIS 250 at *51 (Oct. 30, 2009) (Comm'n Op.) (explaining that if conduct is "inherently suspect" in nature, and there are no cognizable procompetitive justifications, the Commission can condemn it "without proof of market power or actual effects").

[4] *See, e.g., In re Valassis Commc'ns, Inc.*, 141 F.T.C. 247 (2006); *In re Stone Container*, 125 F.T.C. 853 (1998); *In re Precision Moulding*, 122 F.T.C. 104 (1996). *See also In re McWane, Inc.*, Docket No. 9351, Opinion of the Commission on Motions for Summary Decision at 20–21 (F.T.C. Aug. 9, 2012) ("an invitation to collude is 'the quintessential example of the kind of conduct that should be . . . challenged as a violation of Section 5' ") (citing the Statement of Chairman Leibowitz and Commissioners Kovacic and Rosch, *In re U-Haul Int'l, Inc.*, 150 F.T.C. 1, 53 (2010)).

As described above, during the relevant time period, Fortiline competed with Manufacturer A in selling DIP to customers while also serving as Manufacturer A's distributor. Fundamentally, the fact that the firms are competitors in some transactions and collaborators in others does not alter the legal analysis. An agreement between actual or potential competitors that restrains *interbrand* price competition between the two firms presumptively harms competition. The existence of an intrabrand component to the conspirators' relationship (such as a distribution agreement or a license agreement) does not necessarily foreclose *per se* analysis.[6] The relevant issue is not whether the parties are in a vertical or horizontal *relationship,* but whether the *restraint* on competition is an intrabrand restraint or an interbrand restraint.[7] A similar analysis applies in the context of an invitation to collude.

Here, the Complaint charges that Fortiline invited Manufacturer A to collude on pricing *across the board,* including on transactions in which Fortiline was distributing for a rival manufacturer, Manufacturer B.[8] Certainly, market and price-related communications between a manufacturer and its distributor can be appropriate and procompetitive.[9] A firm may not, however, use an intrabrand relationship to shield itself from anticompetitive interbrand conduct.[10] As an intrabrand relationship will not immunize an otherwise unlawful agreement, it likewise will not immunize an unlawful invitation to collude. If Manufacturer A accepted Fortiline's requests to raise prices on projects for which the firms were interbrand competitors, the resulting agreement would be *per se* unlawful. It follows that Fortiline's communications to Manufacturer A—its attempts to secure an unlawful agreement—were unlawful invitations to collude.

III. The Proposed Consent Order

The Commission recognizes the need to tailor relief that will prevent Fortiline from engaging in the anticompetitive conduct described in the complaint, yet avoid chilling procompetitive communications and efficient contracting between Fortiline and each of its current and future suppliers.

The Proposed Order contains the following substantive provisions: Section II prohibits Fortiline from entering into, attempting to enter into, participating in, maintaining, organizing, implementing, enforcing, inviting, encouraging, offering or soliciting an agreement or understanding with any competitor to raise or fix prices or any other pricing action, or to allocate or divide markets, customers, contracts, transactions, business opportunities, lines of commerce, or territories. Two provisos apply to Section II. The first proviso makes clear that Fortiline may engage in conduct that is reasonably related to, and reasonably necessary to achieve the procompetitive benefits of, a lawful manufacturer-distributor relationship, joint venture agreement, or lawful merger, acquisition, or sale agreement. The second proviso makes clear that Fortiline may negotiate and enter into an agreement to buy DIP from, or sell DIP to, a competitor.

Paragraphs III–VI of the Proposed Order impose certain standard reporting and compliance requirements on Fortiline.

The Proposed Order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–19339 Filed 8–12–16; 8:45 am]

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[5] *In re Valassis Commc'ns,* 141 F.T.C. at 283 (Analysis of Agreement Containing Consent Order to Aid Public Comment).

[6] *See Gen. Leaseways, Inc.* v. *Nat'l Truck Leasing Ass'n,* 744 F.2d 588, 594 (7th Cir. 1984) ("It does not follow that because two firms sometimes have a cooperative relationship there are no competitive gains from forbidding them to cooperate in ways that yield no economies but simply limit competition."). *See also Palmer* v. *BRG of Georgia, Inc.,* 498 U.S. 46, 49 (1990) (*per se* liability where conspirators had both horizontal and vertical (licensor/licensee) relationship); *Eli Lilly and Co.* v. *Zenith Goldline Pharmaceuticals, Inc.,* 172 F.Supp.2d 1060 (S.D. Ind. 2001) (*per se* liability where conspirators had both horizontal and vertical relationship); *United States* v. *General Electric Co.,* 1997–1 Trade Cas. (CCH) ¶ 71,765 (D. Mont. 1997) (same).

[7] *See United States* v. *Apple, Inc.,* 791 F.3d 290, 322 (2d Cir. 2015) (internal citations omitted) (rejecting Apple's argument that its role in a horizontal conspiracy with publishers should be evaluated under rule of reason because it was in a vertical relationship with publishers, noting that "it is the type of restraint that Apple agreed with the publishers to impose that determines whether the *per se* rule or the rule of reason is appropriate. These rules are means of evaluating 'whether [a] *restraint* is unreasonable,' not the reasonableness of a particular defendant's role in the scheme.").

[8] The Commission has previously found similar communications to constitute unlawful invitations to collude. *E.g., In re Step N Grip LLC,* 160 F.T.C. ____, Docket No. C–4561 (Dec. 7, 2015), *https://www.ftc.gov/enforcement/cases-proceedings/151-0181/step-n-grip-llc-matter* (respondent communicated to competitor that both parties should sell at the same price); *In re Precision Moulding,* 122 F.T.C. 104 (1996) (respondent complained to competitor that the competitor's pricing was "ridiculously low" and that the competitor did not have to "give the product away"); *In re AE Clevite,* 116 F.T.C. 389, 391 (1993) (respondent complained to competitor about its pricing, and subsequently faxed the competitor comparative price lists from both companies).

[9] *See Monsanto Co.* v. *Spray-Rite Service Corp.,* 465 U.S. 752, 764–65 (1984).

[10] *See supra* notes 6–8.

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend for an additional three years the current PRA clearance for information collection requirements in its Affiliate Marketing Rule (or "Rule"), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau ("CFPB") of the provisions (subpart C) of the CFPB's Regulation V regarding other entities ("CFPB Rule"). The current clearance expires on January 31, 2017.

DATES: Comments must be filed by October 14, 2016.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Affiliate Marketing Disclosure Rule, PRA Comment: FTC File No. P0105411" on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/affiliatemarketingpra, by following the instructions on the web-based form.* If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Ruth Yodaiken, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Room CC–8232, Washington, DC 20580, (202) 326–2127.

SUPPLEMENTARY INFORMATION: On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[1] The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the CFPB most of the FTC's rulemaking authority for the Affiliate Marketing provisions of the Fair Credit Reporting Act (''FCRA''),[2] on July 21, 2011.[3] For certain other portions of the FCRA, the FTC retains its full rulemaking authority.[4]

The FTC retains rulemaking authority for its Affiliate Marketing Rule, 16 CFR 680, solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[5]

Regulation V subpart C does not affect the pre-existing requirements of the FCRA. Additionally, the FTC shares enforcement authority with the CFPB for provisions of Regulation V subpart C that apply to entities other than those specified above. Thus, for that remainder, the FTC and CFPB have overlapping enforcement authority.

As an analytical framework to estimate PRA burden in the ''Burden Statement'' below, the FTC estimates burden pertaining to respondents over which both agencies have shared enforcement authority, divides the resulting total by one-half to reflect the FTC's shared jurisdiction, and add to the resulting subtotal the incremental estimated burden regarding the motor vehicle dealers described above over which the FTC retains exclusive enforcement (and rulemaking) authority.

Background

As mandated by section 214 of the Fair and Accurate Credit Transactions Act (''FACT Act''), Public Law 108–159 (Dec. 6, 2003), the Affiliate Marketing Rule, 16 CFR part 680, specifies disclosure requirements for certain affiliated companies. Except as discussed below, these requirements constitute ''collection[s] of information'' for purposes of the PRA. Specifically, the FACT Act and the FTC Rule require covered entities to provide consumers with notice and an opportunity to opt out of the use of certain information before sending marketing solicitations. The FTC Rule generally provides that, if a company communicates certain information about a consumer (eligibility information) to an affiliate, the affiliate may not use it to make or send solicitations to him or her unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and s/he does not opt out.

To minimize compliance costs and burdens for entities, particularly any small businesses that may be affected, the FTC Rule contains model disclosures and opt-out notices that may be used to satisfy the statutory requirements. The FTC Rule also gives covered entities flexibility to satisfy the notice and opt-out requirement by sending the consumer a free-standing opt-out notice or by adding the opt-out notice to the privacy notices already provided to consumers, such as those provided in accordance with the provisions of Title V, subtitle A of the Gramm Leach Bliley Act (''GLBA'').[6] In either event, the time necessary to prepare or incorporate an opt-out notice would be minimal because those entities could either use the model disclosure verbatim or base their own disclosures upon it. Moreover, verbatim adoption of the model notice does not constitute a PRA ''collection of information.'' [7]

Burden Statement

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must get OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under the FTC and CFPB Rules.

Except where otherwise specifically noted, staff's estimates of burden are based on its knowledge of the consumer credit industries and knowledge of the entities over which the Commission has jurisdiction. This said, estimating PRA burden of the Rule's disclosure requirements is difficult given the highly diverse group of affected entities that may use certain eligibility information shared by their affiliates to send marketing notices to consumers.

The estimates provided in this burden statement may well overstate actual burden. As noted above, verbatim adoption of the disclosure of information provided by the federal government is not a ''collection of information'' to which to assign PRA burden estimates, and an unknown number of covered entities will opt to use the model disclosure language. Second, an uncertain, but possibly significant, number of entities subject to FTC jurisdiction do not have affiliates and thus would not be covered by section 214 of the FACT Act or the Rule. Third, Commission staff does not know how many companies subject to FTC jurisdiction under the Rule actually share eligibility information among affiliates and, of those, how many affiliates use such information to make marketing solicitations to consumers. Fourth, still other entities may choose to rely on the exceptions to the Rule's notice and opt-out requirements.[8] Finally, the population estimates below to apply further calculations are based on industry data that, while providing tallies of business entities within industries and industry segments, does not identify those entities individually. Thus, there is no clear path to ascertain how many individual businesses have newly entered and departed within a given industry classification, from one year to the next or from one triennial PRA clearance cycle to the next. Accordingly, there is no ready way to quantify how many establishments accounted for in the data reflect those previously accounted for in the FTC's prior PRA analysis, *i.e.*, entities that would already have experienced a declining learning curve applying the Rule with the passage of time. For simplicity, the FTC analysis will continue to treat covered entities as newly undergoing the previously assumed learning curve cycle, although this would effectively overstate estimated burden for unidentified covered entities that have remained in existence since OMB's most recent clearances for the FTC Rule.[9]

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[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 15 U.S.C. 1681 *et seq.*

[3] Dodd-Frank Act, at section 1061. This date was the ''designated transfer date'' established by the Treasury Department under the Dodd-Frank Act. *See* Dep't of the Treasury, *Bureau of Consumer Financial Protection; Designated Transfer Date,* 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act, at section 1062.

[4] The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for FCRA sections 615(e) (''Red Flag Guidelines and Regulations Required'') and 628 (''Disposal of Records''). *See* 15 U.S.C. 1681s(e); Public Law 111–203, section 1088(a)(10)(E). Accordingly, the Commission retains full rulemaking authority for its ''Identity Theft Rules,'' 16 CFR part 681, and its rules governing ''Disposal of Consumer Report Information and Records,'' CFR part 682. *See* 15 U.S.C. 1681m, 1681w.

[5] *See* Dodd-Frank Act, at section 1029 (a), (c).

[6] 15 U.S.C. 6801 *et seq.*

[7] ''The public disclosure of information originally supplied by the Federal government to the recipient for purpose of disclosure to the public is not included within [the definition of collection of information].'' 5 CFR 1320.3(c)(2).

[8] Exceptions include, for example, having a preexisting business relationship with a consumer, using information in response to a communication initiated by the consumer, and solicitations authorized or requested by the consumer.

As in the past, FTC staff's estimates assume a higher burden will be incurred during the first year of a prospective OMB three-year clearance, with a lesser burden for each of the subsequent two years because the opt-out notice to consumers is required to be given only once. Institutions may provide for an indefinite period for the opt-out or they may time limit it, but for no less than five years.

Staff's labor cost estimates take into account: Managerial and professional time for reviewing internal policies and determining compliance obligations; technical time for creating the notice and opt-out, in either paper or electronic form; and clerical time for disseminating the notice and opt-out.[10] In addition, staff's cost estimates presume that the availability of model disclosures and opt-out notices will simplify the compliance review and implementation processes, thereby significantly reducing the cost of compliance. Moreover, the Rule gives entities considerable flexibility to determine the scope and duration of the opt-out. Indeed, this flexibility permits entities to send a single joint notice on behalf of all of its affiliates.

A. Non-GLBA Entities

Based, in part, on industry data regarding the number of businesses under various industry codes, staff estimates that 958,894 non-GLBA entities under FTC jurisdiction have affiliates and would be affected by the Rule.[11] Commission staff further estimates an average of 5 businesses per family or affiliated relationship, and believes that the affiliated entities will choose to send a joint notice, as permitted by the Rule. Thus, an estimated 191,779 non-GLBA business families may send the affiliate marketing notice.

Staff also estimates that non-GLBA entities under the jurisdiction of the FTC would each incur 14 hours of burden during the prospective requested three-year PRA clearance period, comprised of a projected 7 hours of managerial time, 2 hours of technical time, and 5 hours of clerical assistance. Non-GLBA entities, however, will give notice only once during the clearance period ahead. Thus, average annual burden for non-GLBA families during the prospective three-year clearance period would approximate 894,969 hours.[12] Associated average annual labor cost would total $35,626,785.[13] These estimates include the start-up burden and attendant costs, such as determining compliance obligations.

B. GLBA Entities

Entities that are subject to the Commission's GLBA privacy notice regulation already provide privacy notices to their customers.[14] Because the FACT Act and the Rule contemplate that the affiliate marketing notice can be included in the GLBA notices, the burden on GLBA regulated entities would be greatly reduced. Accordingly, the GLBA entities would incur 6 hours of burden during the first year of the clearance period, comprised of a projected 5 hours of managerial time and 1 hour of technical time to execute the notice, given that the Rule provides a model.[15] Staff further estimates that 3,350 GLBA entities under FTC jurisdiction would be affected.[16] Allowing for increased familiarity with procedure, however, the PRA burden in ensuing years would decline, with GLBA entities each incurring an estimated 4 hours of annual burden (3 hours of managerial time and 1 hour of technical time) during the remaining two years of the clearance. Thus, average annual burden for GLBA families during the prospective three-year clearance period would approximate 15,633 hours.[17] Associated average annual labor cost would total $818,059.[18]

Before attribution to the FTC of its apportioned share of PRA burden estimates, the cumulative average annual burden for both non-GLBA and GLBA for the prospective three-year clearance period is 910,602 burden hours and $36,444,844 in labor costs. GLBA entities are already providing notices to their customers so there are no new capital or non-labor costs, as this notice may be consolidated into their current notices. For non-GLBA entities, the Rule provides for simple and concise model forms that institutions may use to comply. Thus, any capital or non-labor costs associated with compliance for these entities are negligible.

C. FTC Share of Burden: 460,205 Hours; $18,472,938, Labor Costs

To calculate the total burden attributed to the FTC, staff first deducted from the total annual burden hours those hours attributed to motor vehicle dealers, which are in the exclusive jurisdiction of the FTC. Staff estimates that there are 62,750 motor vehicle dealerships subject to the Rule.[19] Of these, staff estimates that

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[9] On January 16, 2014, OMB granted three-year clearance for the Rule through January 31, 2017.

[10] No clerical time was included in staff's burden analysis for GLBA entities as the notice would likely be combined with existing GLBA notices.

[11] This estimate is derived from an analysis of a database of U.S. businesses based on June 2015 SIC codes for businesses that market goods or services to consumers, which included, among others, the following industries: Transportation services; communication; electric, gas, and sanitary services; retail trade; finance, insurance, and real estate; and services (excluding business services and engineering, management services). *See http://www.naics.com/search.htm.* This estimate excludes businesses not subject to FTC jurisdiction as well as businesses that do not use data or information subject to the rule. To the resulting sub-total (5,824,739), staff applies a continuing assumed rate of affiliation of 16.75 percent, *see* 78 FR 73,192, 73,193 n.12 (Dec. 5, 2013), thus, 975,644 (businesses in a family tree of at least two members), reduced by a continuing estimate of 100,000 entities subject to the Commission's GLBA privacy notice regulations, *see id.,* applied to the same assumed rate of affiliation. The net total is 958,894 (975,644 − (100,000 × 16.75%).

[12] 191,779 × (14 ÷ 3).

[13] The associated labor cost is based on the labor cost burden per notice by adding the hourly mean private sector wages for managerial, technical, and clerical work and multiplying that sum by the estimated number of hours. The classifications used are "Management Occupations" for managerial employees, "Computer and Mathematical Science Occupations" for technical staff, and "Office and Administrative Support" for clerical workers. See OCCUPATIONAL EMPLOYMENT AND WAGES—MAY 2015, U.S. Department of Labor, released March 30, 2016, Table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2015"): *http://www.bls.gov/news.release/ocwage.htm.* The respective private sector hourly wages for these classifications are $55.30, $41.43, and $17.47. Estimated hours spent for each labor category are 7, 2, and 5, respectively. Multiplying each occupation's hourly wage by the associated time estimate, labor cost burden per notice equals $557.31. This subtotal is then multiplied by the estimated number of non-GLB business families projected to send the affiliate marketing notice (191,779) to determine cumulative labor cost burden for non-GLBA entities ($106,880,354). Averaged over a three-year clearance period this amounts to $35,626,785 per year.

[14] Financial institutions must provide a privacy notice at the time the customer relationship is established and then annually so long as the relationship continues. Staff's estimates assume that the affiliate marketing opt-out will be incorporated in the institution's initial and annual notices.

[15] As stated above, no clerical time is included in the estimate because the notice likely would be combined with existing GLBA notices.

[16] Based on the previously stated estimates of 100,000 GLBA business entities at an assumed rate of affiliation of 16.75 percent (16,750), divided by the presumed ratio of 5 businesses per family, this yields a total of 3,350 GLBA business families subject to the Rule.

[17] 3,350 × (14 ÷ 3).

[18] Year 1: 3,350 GLBA families × [($55.30 × 5 hours) + ($41.43 × 1 hour)] = $1,065,066. Years 2 and 3: 3,350 GLBA families × [($55.30 × 3 hours) + ($41.43 × 1 hour)] = $694,556 each. Annualized: ($1,065,066 + $694,556 + $694,556) ÷ 3 = $818,059.

[19] This figure consists, in part, of 62,750 car dealers (based on industry data for the number of franchise/new car and independent/used car

10% are non-GLBA entities (6,275), and 90% are GLBA entities (56,475). Applying an assumed rate of affiliation of 16.75%, staff estimates that there are 1,051 non-GLBA and 9,460 GLBA motor vehicle dealerships in affiliated families. Staff further assumes there are an average of 5 businesses per family or affiliated relationship, leaving approximately 210 non-GLBA and 1,892 GLBA motor vehicle dealership families, respectively.

Staff further estimates that non-GLBA business families will spend 14 hours in the first year and 0 hours thereafter to comply with the Rule, while GLBA business families will spend 6 hours in the first year, and 4 hours in each of the following two years. The cumulative average annual burden for the non-GLBA and GLBA motor vehicle dealership families is 9,809 hours.[20]

To calculate the FTC's total shared burden hours, staff deducted from overall estimated burden hours (910,602 hours) the hours attributed to motor vehicle dealerships (9,809 hours), leaving a total of 900,793 hours to split between the CFPB and the FTC. The resulting shared burden for the CFPB is half that amount, or 450,396 hours. To calculate the total burden hours apportioned to the FTC, staff added to the shared sub-total (450,396 hours) the hours separately attributed to motor vehicle dealers (9,809 hours), which yields for the FTC an apportioned burden estimate of 460,205 hours.

Staff used the same approach to estimate the shared costs for the FTC. Staff estimated the costs attributed to motor vehicle dealers as follows: Non-GLBA business families have $35,626,785 in annualized labor costs,[21] and GLBA business families have $818,059 in annualized labor costs,[22] for cumulative annualized costs of $36,444,844.

To calculate, on an annualized basis, the FTC's cumulative share of labor cost burden, staff deducted from overall total labor costs ($36,444,844) the labor costs attributed to motor vehicle dealerships ($501,032), leaving a net amount of $35,943,812 to split between the CFPB and the FTC. The resulting shared burden for the CFPB is half that amount, or $17,971,906. To calculate the total burden hours for the FTC, staff added the costs associated with motor vehicle dealers ($501,032), resulting in a total cost burden for the FTC of $18,472,938.

Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 14, 2016. Write "Affiliate Marketing Disclosure Rule, PRA Comment: FTC File No. P0105411" on your comment. Your comment, including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm*. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[23] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://public.commentworks.com/ftc/affiliatemarketingpra* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write "Affiliate Marketing Disclosure Rule, PRA Comment: FTC File No. P0105411" on your comment, and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 14, 2016. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm*.

David C. Shonka,

Acting General Counsel.

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dealers) (81 FR 33,255 at 33,257 n9 (May 25, 2016) (FTC Prescreen Opt-Out Rule PRA analysis).

[20] (210 non-GLBA business families × 4.666667 average hours = 980 hours, annualized) + (1,892 GLBA business families × 4.666667 average hours per family = 8,829 hours, annualized) = 9,809 hours, annualized.

[21] 191,779 non-GLBA business families × combined rate of $557.31 (*see supra* note 13) ÷ 3 = $35,626,785.

[22] *See supra* note 18.

[23] In particular, the written request for confidential treatment that accompanies the comment must include the actual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 81 FR 46677, dated July

18, 2016) is amended to reflect the reorganization of the Division of Tuberculosis Elimination, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Office of Infectious Diseases, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete and replace the title and the mission and function statements for the *Division of Tuberculosis Elimination (CVJE)* and insert the following:

Division of Tuberculosis Elimination (CVJE). The Division of Tuberculosis Elimination (DTBE) promotes health and quality of life by preventing, controlling, and eventually eliminating tuberculosis (TB) from the United States (U.S.), and collaborates with international partners by representing the U.S. national TB program. In carrying out its mission, the Division conducts the following activities under each focus area: (1) Administers and promotes a national program for the prevention, control, and elimination of TB; (2) supports a nationwide framework for surveillance of TB and evaluation of national TB prevention and control performance; (3) provides programmatic consultation, technical assistance, and outbreak response assistance to state and local TB programs; (4) co-chairs and coordinates administrative support for the Federal TB Task Force, and supports and collaborates with the National Tuberculosis Controllers Association (NTCA) and the Tuberculosis Education and Training Network to promote effective national communications and coordinated feedback on urgent policy and program performance issues; (5) supports development of TB patient education materials and interventions, capacity development, and access to medical consultation; (6) provides national and supranational reference laboratory function for identification and drug susceptibility testing of Mycobacterium tuberculosis; (7) fosters patient-centered messages, including those regarding directly-observed therapy, to promote adherence with long-term treatment for improvements in well-being and interruption in community transmission of M. tuberculosis; (8) promotes targeted testing of epidemiologically-defined at-risk populations and treatment of persons with latent TB; (9) conducts epidemiologic, laboratory, behavioral, health systems, and clinical research; (10) supports patient and provider research to identify barriers and facilitators to TB services; (11) supports multicenter consortia for epidemiologic, laboratory, diagnostics, clinical, and vaccine development research; (12) develops and applies mathematical TB transmission models to forecast future incidence and prevalence trends; (13) provides leadership and formulates policies and guidelines; (14) provides technical supervision and training to federal assignees working in state, and local TB control programs; (15) develops training and educational materials, and provides technical assistance on communications and training needs; (16) participates in the development of policies and guidelines for TB prevention and control within populations at high risk, such as persons infected with HIV or racial and ethnic minorities; (17) supports technical activities and operational research to reduce TB in foreign-born populations; (18) Represents the U.S. national TB program with regard to the global health initiatives for the prevention and control of TB and drug-resistant TB; (19) Represents the U.S. national TB control program with regard to the World Health Organization (WHO)-hosted Stop TB Partnership for implementation of the Global Plan to Stop TB and Millennium Development Goals; (20) monitors progress and trends towards TB elimination, including progress towards CDC's Healthy People 2020; (21) provides progress reports to, and solicits advice from, the Advisory Council for the Elimination of Tuberculosis (ACET); and (22) facilitates partnerships with affected communities, nongovernmental, professional, and global organizations.

Office of the Director (CVJE1). (1) Provides leadership and guidance in program planning and management, policy formulation, and development of training, surveillance, and research programs in TB; (2) directs and evaluates the operations of the Division; (3) establishes contact with, and promotes TB activities of, other organizations that have an important role to play in achieving TB elimination; (4) coordinates administrative and logistical support services for the Division; (5) provides consultation and assistance in writing reports for presentation at local, regional, national, and international scientific meetings and for publication in scientific journals; (6) coordinates and tracks materials for purposes of clearance and approval for publications and presentations; (7) presents findings at national and international scientific meetings; (8) presents Division overview at the ACET meetings; (9) collaborates and coordinates Division activities with other components of NCHHSTP and CDC; (10) provides technical support to ACET; (11) provides administrative and technical support for STOP TB USA (previously the National Coalition for the Elimination of Tuberculosis) and the Federal TB Task Force; and (12) provides representation of the U.S. national TB program to WHO and other international entities.

Communications, Education, and Behavioral Studies Branch (CVJEB). (1) Provides technical assistance to health departments and other health care providers in assessing and meeting their TB training, education, and communication needs; (2) provides technical expertise to assess the impact of training and education activities by health departments; (3) provides technical assistance to health departments and other TB health care providers regarding behavioral studies research and intervention development; (4) provides consultation and assistance in coordinating TB training, education, behavioral studies and interventions, and communication activities carried out by other CDC programs, Regional Training and Medical Consultation Centers, and Stop TB USA members, and develops, markets, and maintains electronic mailing lists for persons with TB-related education, training, and communication responsibilities; (5) provides DTBE coordination and oversight and technical information for CDC INFO; (6) organizes and maintains scientific and non-scientific information resources related to TB; (7) conducts formative research and evaluation on approaches to patient, provider, and public education, and conducts research on individual and social factors affecting health-care seeking behavior and treatment outcomes related to TB; (8) based on research findings, develops behavioral interventions targeted to health care providers, persons with or at risk for TB, and other high-risk populations; (9) provides consultation to national organizations on behavioral research needs and study designs; on the technical transfer of behavioral research findings into TB program practice and TB training and educational strategies; and provides consultation, technical assistance and coordination to other branches within the Division regarding development and implementation of behavioral interventions and training for branch specific activities such as Report of Verified Case of Tuberculosis, Aggregate Reports for Program Evaluation, and surveillance activities; (10) presents findings at national and international scientific meetings and develops, disseminates and evaluates training and educational materials and courses providing TB information to the scientific and public health communities, as well as the general population; (11) conducts training and education needs assessments; identifies resources available for health department TB control officers and senior managers, TB nurse consultants, TB training and education directors and for senior staff carrying out TB activities in other programs or facilities serving persons at high risk for TB; and develops, conducts, and coordinates training courses on TB for state and big city TB program managers and nurse consultants; (12) based on needs assessments, develops and conducts or coordinates training courses and materials for staff who train and/or supervise front-line TB program staff; (13) provides oversight in the planning, coordination, and maintenance of the Division's Internet and Intranet Web sites; (14) conducts and/or coordinates communications programs designed to build public support and sustain public interest and commitment to the elimination of TB; (15) conducts communications research and identifies communications resources available for health department TB control officers and senior managers, TB nurse consultants, and for senior staff carrying out activities in other programs or facilities serving persons at high risk for TB; (16) provides coordination and oversight for Division responses and relations with the media and public and serves as point of contact for telephonic, written, and electronic (email) requests for information from the media and public; (17) develops, coordinates, and staffs the Division's exhibit booth at conferences/meetings; (18) provides oversight and coordination for TB-related voice and web-based TB information, training, and education resources; and (19) presents communications issues to ACET and at national and international scientific meetings.

Data Management, Statistics, and Evaluation Branch (CVJEC). (1) Provides Division-wide leadership in and coordination of data management, statistics, program evaluation, and economic planning, policy development, and monitoring within an integrated systems framework, playing a central role in the education of all DTBE staff on the science and methods of data management, statistics, program evaluation, and health economics; (2) consults and assists in appropriate data collection, management, analysis, and reporting for scientific studies conducted Division-wide; (3) collaborates in the statistical analysis of data and in the preparation of materials for publication; (4) coordinates and oversees data management and statistical design, implementation and analysis support, and consultation for the TB Clinical Trials and the TB Epidemiologic Studies Consortia; (5) conducts statistical research and methods development, including mathematical models of TB transmission and diagnostic test performance to improve the effectiveness of prevention and control activities; (6) coordinates data management, statistics, and evaluation services provided under contractual services; (7) collaborates with other components of the Division to develop and implement strategies and activities to meet goals for Division priorities; (8) translates overall NCHHSTP and DTBE strategies into branch-specific implementation plans for research and programs; and (9) participates in the development of comprehensive evaluation methods for TB prevention and control programs; (10) consults on the implementation of key provisions of program evaluation contained in cooperative agreements between CDC and external state and local TB programs; (11) provides transparent and easily understood program evaluation and health economic data to TB control programs that serve them in meeting TB national goals and objectives; (12) galvanizes external TB control programs to implement and use National TB Indicators Project data to prioritize program areas for improvement; (13) provides major authoritative technical advice on economics and be an authority on all matters related to the analysis and collection of economic data relevant to Division goals, and (14) presents data management, statistical, and economic considerations, and reporting issues to ACET and other national and international scientific meetings.

Field Services Branch (CVJED). (1) Provides medical and programmatic consultation to assist state and local health departments in developing, implementing and evaluating their activities toward achieving tuberculosis prevention, control, and elimination; (2) promotes adoption of CDC tuberculosis-related policies by national organizations, health departments, and health care providers; (3) provides consultation and assists state and local health departments in the methodology and application of tuberculosis control techniques recommended by CDC; (4) provides technical assistance to states and localities for improving program operations; (5) encourages and facilitates the transfer of new technology and guidelines into clinical and public health practice; (6) serves as a liaison or focal point to assist TB programs in state and local health departments in linking with proper resource persons and obtaining technical assistance, both within and outside the Division; (7) participates in development of national policies and guidelines for tuberculosis elimination; (8) identifies and facilitates sharing of best practices to ensure that good program methodology in one program is known and made available to other state and local programs; (9) serves as the lead branch for administration and management of cooperative agreement programs with state and local health department tuberculosis programs and others who support state and local health department tuberculosis programs; (10) develops funding opportunities based on Division strategic priorities; (11) coordinates technical reviews of cooperative agreement applications and makes appropriate funding recommendations; (12) monitors grantee performance on activities specified in the cooperative agreement; (13) identifies specific management, operational, and staff performance problems associated with not achieving TB control objectives or with not implementing essential TB components, and recommends solutions; (14) participates in the development of comprehensive evaluation methods for TB prevention and control programs; (15) collaborates with other DTBE branches in the evaluation of tuberculosis programs and development of program management and evaluation reports for publication; (16) provides supervision and support for the CDC field staff; (17) conducts a continuing analysis of the effectiveness of field personnel and utilization of other resources in relation to the tuberculosis problems; (18) provides input in to the development of Division policy, priorities and operational procedures; (19) provides programmatic oversight, technical assistance, and medical consultation to the Regional Training and Medical Consultation Centers; and (20) presents programmatic activities to ACET and at national and international scientific meetings.

Clinical Research Branch (CVJEE). (1) Assesses the need for and conducts studies of new or existing drugs and regimens used in the prevention and treatment of TB, including dosage, duration, pharmacokinetics and toxicity; (2) supports the TB Trials Consortium in the conduct of studies of new treatments for active TB and latent TB infection; (3) supports coordinated and standardized data management for branch research, and serves as the Data and Coordinating Center for the TB Trials Consortium, collaborating as needed with both internal and external partners; (4) provides clinical support and oversight for the distribution of investigational drugs for the treatment and prevention of TB by CIOs/Scientific Resources/Drug Service; (5) assesses the need for and conducts clinical and field trials of more specific and rapid tests to diagnose active TB and latent TB infection and to identify drug-resistant TB in collaboration with the Laboratory Branch; (6) collaborates with and provides consultation and technical assistance to national and international organizations on the design and conduct of clinical trials and research needs; (7) conducts, participates in, and collaborates with other DTBE units in research on clinical, epidemiologic, immunologic and genetic aspects of TB prevention and control; (8) collaborates with external partners in implementation of research; (9) maintains expertise and addresses special research needs relevant to drug pharmacokinetics, microbiology, drug resistant TB & special populations, including children and persons living with HIV; (10) provides consultation and training to local, state, national and international organizations and to TB program field staff, on design and conducts of clinical trials, TB therapeutics and diagnostics, health care systems research needs, decision and economic analyses, evaluation techniques, qualitative research methods, and research on TB transmission; (11) has responsibility for Divisional engagement in preparing for and participating in trials of new TB vaccines and when appropriate, collaborates with private and public institutions in the area of vaccine development; (12) reports study results to public health practitioners through direct communication, articles in scientific journals and CDC publications, and oral and poster presentations at national and international scientific and program meetings; (13) provides input into statements and guidelines issued by the CDC, the ACET, and professional organizations; and (14) presents research issues and findings to ACET and at national and international scientific meetings.

Surveillance, Epidemiology, and Outbreak Investigations Branch (CVJEG). (1) Directs national surveillance of tuberculosis to provide accurate and timely national data and to monitor progress toward the elimination of tuberculosis in the U.S.; (2) conducts analyses of national TB surveillance data to monitor national trends in TB in order to assist n program planning, evaluation, and policy development and to identify areas for further study to guide elimination efforts; (3) conducts surveillance-related studies that evaluate current TB surveillance systems and develops new surveillance methods and systems in order to better monitor and accelerate TB elimination efforts; (4) provides technical surveillance expertise to state and local TB control programs, other federal agencies, and other organizations involved in TB prevention and control; (5) conducts epidemiologic research to assess the characteristics of persons with M. tuberculosis disease and infection in the U.S.; (6) analyzes research findings to develop improved interventions for eliminating tuberculosis and better analytic tools for future studies; (7) provides technical epidemiologic expertise to state and local tuberculosis control programs; (8) supports the TB Epidemiologic Studies Consortium in the conduct of studies of programmatically relevant epidemiologic, behavioral, economic, laboratory, and operational research concerning the identification, diagnosis, prevention and control of TB disease and latent infection; (9) conducts molecular epidemiologic analyses of TB cases to identify, track, and guide interventions to stop TB outbreaks; (10) investigates outbreaks of tuberculosis; (11) provides consultation and technical expertise on TB surveillance, epidemiology and outbreaks to state and local tuberculosis control programs; (12) analyzes TB outbreak investigation findings in order to improve the ability of tuberculosis control programs to detect future outbreaks and respond to them promptly and appropriately to limit transmission; (13) supervises EIS officers in the conduct of their two-year assignments; (14) prepares manuscripts for publication in scientific journals; (15) presents findings at national and international scientific meetings; and (16) presents surveillance, epidemiology, and outbreak findings to ACET and at national and international scientific meetings

Laboratory Branch (CVJEJ). (1) Serves as the national reference laboratory in support of the mission of DTBE, fulfilling public health function in leadership, clinical and consultative service, and research; (2) provides laboratory support for epidemiological investigations, surveillance activities, and special studies of Mycobacterium tuberculosis, in collaboration with other branches; (3) administers contracts to provide M. tuberculosis genotyping, maintains a national database of genotypes, and conducts operational research to evaluate genotyping and optimize use of state-of-the-art methods; (4) serves as primary CDC source for reference laboratory services for M. tuberculosis; (5) administers grants and cooperative agreements to strengthen laboratory activities and advance testing services; (6) provides consultation, technical assistance, and training to state and municipal public health laboratories; (7) develops, evaluates, or improves conventional and molecular methods for the detection, characterization, and susceptibility testing of M. tuberculosis; (8) conducts studies to define the role of bacterial virulence factors and host factors in disease processes and protection, and develops, evaluates, and improves methods for the diagnosis and prevention of TB; (9) develops experimental models of TB and conducts studies on therapy, pathogenesis, and prevention for TB; (10) prepares manuscripts for publication in scientific journals; (11) presents findings at national and international scientific meetings; (12) supervises and trains fellows in temporary or multi-year educationally-based programs in areas related to the mission of the branch; and (13) elevates awareness of laboratory issues to ACET and other stakeholders.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2016–19302 Filed 8–12–16; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2016–0067, Docket Number NIOSH 270–A]

NIOSH Center for Motor Vehicle Safety: Midcourse Review of Strategic Plan

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public web meeting and request for comment.

SUMMARY: The National Institute for Occupational Safety and Health of the

Centers for Disease Control and Prevention announces a public web meeting and an opportunity to comment on future directions for the NIOSH Center for Motor Vehicle Safety. To view the notice and related materials, visit *http://www.regulations.gov* and enter CDC–2016–0067 in the search field and click "Search."

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DATES: The public web meeting will be held on September 14, 2016 from 1:00 p.m. to 5:00 p.m. Eastern Time, or after the last public commenter in attendance has spoken, whichever occurs first. The public web meeting will be a web-based event available only by remote access. Written comments submitted to the docket must be received by October 14, 2016.

ADDRESSES: You may submit written comments, identified by CDC–2016–0067 and Docket Number NIOSH 270–A, by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *Mail:* National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998.

FOR FURTHER INFORMATION CONTACT: Dr. Rosa L. Rodriguez, Division of Safety Research, 1095 Willowdale Road, MS 1808, Morgantown, West Virginia 26505–2888, (304) 285–6299 (not a toll free number), *rer3@cdc.gov;* or Dr. Stephanie G. Pratt, Division of Safety Research, 1095 Willowdale Road, MS 1808, Morgantown, West Virginia 26505–2888, (304) 285–5992 (not a toll free number), *sgp2@cdc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The National Institute for Occupational Safety and Health (NIOSH) is seeking input on the progress and future direction of its Center for Motor Vehicle Safety to ensure that the program is (1) addressing goals outlined in the *NIOSH Center for Motor Vehicle Safety: Strategic Plan for Research and Prevention, 2014–2018 http://www.cdc.gov/niosh/docs/2014–122/pdfs/2014–122.pdf;* (2) meeting stakeholder needs; and (3) working effectively toward its overarching purpose of preventing work-related crashes and injuries.

Motor vehicle crashes are the leading cause of work-related injury deaths in the United States. Millions of workers drive or ride in a motor vehicle as part of their jobs. The risk affects workers in all industries and occupations, whether they drive heavy or light vehicles on the job.

Between 2003 and 2014, 22,000 workers died in work-related motor vehicle crashes. In 2013 alone, motor vehicle crashes at work cost U.S. employers $25 billion—$65,000 per nonfatal injury and $671,000 per death.

NIOSH is the only U.S. federal agency whose mission encompasses prevention of work-related motor vehicle crashes and resulting injuries for all worker populations. Since 2014, the NIOSH Center for Motor Vehicle Safety has followed a 5-year strategic plan for research and prevention to work toward meeting five strategic goals.

To help us review midcourse progress, we request your comment on the Center's work and goals. NIOSH is especially interested in comments that address the following topics:

Research Priorities

1. What research should NIOSH consider pursuing during the remaining period covered by the *NIOSH Center for Motor Vehicle Safety: Strategic Plan for Research and Prevention, 2014–2018?*
2. What research should NIOSH begin planning to initiate beyond 2018?
3. Are there additional external research partners NIOSH should work with?

Communications and Outreach

4. What specific resources or tools are most urgently needed to move prevention of work-related crashes forward?
5. What audience(s) for workplace crash-prevention information should NIOSH prioritize in planning its communication strategy?
6. What are your organization's preferred digital communication channels for receiving workplace crash-prevention information (*e.g.,* email, social media, eNewsletter, Web page)?

Use of NIOSH Products

7. How have you or your organization used information from the NIOSH Center for Motor Vehicle Safety? Of particular interest is information on changes made in workplace motor vehicle safety programs based on research results and/or communication materials and the impact of those changes.

For information about the NIOSH Center for Motor Vehicle Safety, visit *www.cdc.gov/niosh/motorvehicle.*

For information about Center for Motor Vehicle Safety progress towards meeting strategic goals, see the following supporting documents in *http://www.regulations.gov: NIOSH Center for Motor Vehicle Safety: Strategic Plan for Research and Prevention, 2014–2018; NIOSH Center for Motor Vehicle Safety: Progress Report 2016 http://www.cdc.gov/niosh/motorvehicle/pdfs/progressreport.pdf* and *NIOSH Center for Motor Vehicle Safety: Performance Measures http://www.cdc.gov/niosh/motorvehicle/pdfs/performancemeasures.pdf.*

II. Public Web Meeting

NIOSH will hold a public web meeting on September 14, 2016 from 1:00 p.m. to 5:00 p.m. Eastern Time, to allow for comments on future directions for the NIOSH Center for Motor Vehicle Safety. Attendance to this public web meeting is first come, first served.

Confirm your attendance to this web meeting by sending an email to *rolsavsky@cdc.gov* with the subject line "Attendance: Public web meeting" by September 1, 2016. An email confirming registration will be sent from NIOSH and will include details needed to participate.

Requests to make presentations at the public web meeting should be emailed to *rolsavsky@cdc.gov* with the subject line "Request to present: Public web meeting" by September 1, 2016. All requests to present should contain the name, address, telephone number, and relevant organizational affiliation(s) of the presenter. Presenters will be assigned a 10-minute slot on the agenda. Presenters who wish to use slides must email an electronic file in Microsoft PowerPoint format to *rolsavsky@cdc.gov* with the subject line "Presentation: Public web meeting" by September 1, 2016. An email confirming the presentation request will be sent from NIOSH and will include details needed to present and an approximate start time for the presentation. Presenters are encouraged to be on-line at the start of the web meeting, since the web meeting could end early and presenter may miss their opportunity to present. For assistance with technical difficulties the day of the web meeting, email Sydney Webb at *yht4@cdc.gov.*

If a presenter is not on-line when his/her presentation is scheduled to begin, the remaining presenters will be heard in order. After the last scheduled presenter is heard, those who missed their opportunity may be allowed to present, limited by time available.

Attendees who wish to speak, but did not submit a request for the opportunity to make a presentation, may be given this opportunity after the scheduled presenters are heard, at the discretion of the presiding officer and limited by time available.

Instructions

All information received in response to this notice must include the agency name and docket number [CDC–2016–0067 and NIOSH 270–A]. The public web meeting, including all presentations and slides, will be recorded, transcribed, and posted without change to *http://www.regulations.gov,* including any personal information provided as well as all relevant comments received. All information received in response to this notice will also be available for public examination and copying at the NIOSH Docket Office, 1150 Tusculum Avenue, Room 155, Cincinnati, Ohio 45226–1998.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2016–19350 Filed 8–12–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: National and Tribal Evaluation of the 2nd Generation of the Health Profession Opportunity Grants.

OMB NO.: 0970–0462

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is proposing data collection activities as part of the Health Profession Opportunity Grants (HPOG) Program. ACF has developed a multi-pronged research and evaluation approach for the HPOG program to better understand and assess the activities conducted and their results. Two rounds of HPOG grants have been awarded—the first in 2010 (HPOG 1.0) and the second in 2015 (HPOG 2.0). There are federal evaluations associated with each round of grants. HPOG grants provide funding to government agencies, community-based organizations, post-secondary educational institutions, and tribal-affiliated organizations to provide education and training services to Temporary Assistance for Needy Families (TANF) recipients and other low-income individuals. Under HPOG 2.0, ACF awarded grants to five tribal-affiliated organizations and 27 non-tribal entities. The proposed data collection activities described in this notice will provide data for the implementation studies of the National and Tribal Evaluation of the 2nd Generation of the Health Profession Opportunity Grants (*i.e.,* the HPOG 2.0 National Evaluation and the HPOG 2.0 Tribal Evaluation) as well as the impact study for the HPOG 2.0 National Evaluation. OMB previously approved baseline data collection and informed consent forms for the HPOG 2.0 Evaluations under OMB Control Number 0970–0462.

The design for the HPOG 2.0 National Evaluation features an implementation study and a cost benefit study. The National Evaluation will use an experimental design to measure and analyze key participant outcomes and impacts including completion of education and training, receipt of certificates and/or degrees, earnings, and employment in a healthcare career.

This information collection clearance request pertains to the implementation study and impact study. Future information collection requests will be submitted related to the implementation study, cost-benefit study, and impact study. The goal of the implementation study is to describe and assess the implementation, systems change, outcomes and other important information about the operations of the 27 non-tribal HPOG grantees, which are operating 38 distinct programs. To achieve these goals, it is necessary to collect data about the non-tribal HPOG program designs and implementation, HPOG partner and program networks, the composition and intensity of HPOG services received, participant characteristics and HPOG experiences, and participant outputs and outcomes.

The goal of the HPOG 2.0 Tribal Evaluation is to conduct a comprehensive implementation and outcome evaluation of the five Tribal HPOG 2.0 grantee programs. The evaluation will assess the HPOG 2.0 programs administered by tribes, tribal organizations, and tribal colleges to identify and assess how programmatic health profession training operations are working; determine differences in approaches being used when programs are serving different sub-populations, including participants with different characteristics and skill levels; and identify programs and practices that are successful in supporting the target population to achieve portable industry-recognized certificates or degrees as well as employment-related outcomes.

The information collection activities to be submitted in the request package include: (1) *Screening Interview to identify respondents for the HPOG 2.0 National Evaluation first-round telephone interviews.* (2) *HPOG 2.0 National Evaluation first-round telephone interviews* with management and staff. These interviews will collect information about the HPOG program context and about program administration, activities and services, partner and stakeholder roles and networks, and respondent perceptions of the program's strengths. (3) *HPOG 2.0 National Evaluation in-person implementation interviews with HPOG personnel* will collect information from six HPOG 2.0 programs with promising approaches to the topic areas of specific interest to ACF. (4) *HPOG 2.0 National Evaluation participant contact update forms.* (5) *HPOG 2.0 Tribal Evaluation grantee and partner administrative staff interviews* will collect information on high-level program strategies, partnerships in place to implement the Tribal HPOG 2.0 program, program development and lessons learned. (6) *HPOG 2.0 Tribal Evaluation program implementation staff interviews* will collect information from instructors, trainers, recruitment and orientation staff, and providers of program or supportive services on Tribal HPOG 2.0 program processes including recruitment, screening, orientation, provision of supportive services, and program implementation. (7) *HPOG 2.0 Tribal Evaluation employer interviews* will collect information from local or regional employers that are partnering with Tribal HPOG 2.0 programs or have employed participants and collect information on employers' impressions of the tribal HPOG 2.0 program and program graduates. (8) *HPOG 2.0 Tribal Evaluation program participant focus groups* will collect information on participants' perceptions, experience, outcomes and satisfaction with the Tribal HPOG 2.0 program. (9) *HPOG 2.0 Tribal Evaluation program participant completer interviews* will collect information on the current employment status of the participants who completed a training program and their perceptions of and satisfaction with the Tribal HPOG 2.0 program. (10) *HPOG 2.0 Tribal Evaluation program participant non-completer interviews* will collect information on reasons participants left the program, short-term outcomes, how they feel the program could be improved, and any plans for future academic training.

ACF will request approval for additional information collection related to the HPOG 2.0 National Evaluation in the future. A **Federal Register** Notice will be published, allowing for public comment prior to submitting the proposed ICR to OMB.

Respondents: For the HPOG 2.0 National Evaluation: HPOG program managers; HPOG program staff; and representatives of partner agencies and stakeholders, including support service providers, education and vocational training providers, Workforce Investment Boards, TANF agencies, and participants at the 27 non-tribal HPOG 2.0 grantees. For the HPOG 2.0 Tribal Evaluation: Tribal HPOG 2.0 program staff; administrative staff at grantee institutions; representatives from partner agencies and stakeholders, including local employers; and Tribal HPOG program participants at the 5 tribal HPOG 2.0 grantees.

This information collection request is for 3 years.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
HPOG 2.0 National Evaluation					
1. Screening tool for identifying respondents for first-round telephone interviews	114	38	1	.5	19
2. First round telephone interview protocol for non-tribal HPOG grantee staff and partners	570	190	1	.75	143
3. On-site interviews with program management, staff and major partners at six programs	216	72	1	1.5	108
4. Participant contact update forms	15,000	5000	4	.1	2000
HPOG 2.0 Tribal Evaluation					
5. Grantee and partner administrative staff interview	105	35	1	1	35
6. Program implementation staff interview	150	50	1	1.5	75
7. Employer interview	90	30	1	.75	23
8. Program participant focus group	405	135	1	1.5	203
9. Program participant completer interview	300	100	1	1	100
10. Program participant non-completer interview	150	50	1	1	50

Estimated Total Annual Burden Hours: 2756.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

ACF/OPRE Certifying Officer.

[FR Doc. 2016–19337 Filed 8–12–16; 8:45 am]

BILLING CODE 4184–72–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0662]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Applications for Food and Drug Administration Approval To Market a New Drug: Patent Submission and Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Valid or Will Not Be Infringed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by September 14, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0513. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Applications for FDA Approval To Market a New Drug: Patent Submission and Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed OMB Control Number 0910–0513—Extension

Section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(b)(1)) requires all new drug application (NDA) applicants to file, as part of the NDA, "the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug." Under section 505(b)(1), we publish the patent information after approval of the NDA in the list entitled "Approved Drug Products with Therapeutic Equivalence Evaluations" (the Orange Book). Section 505(c)(2) of the FD&C Act (21 U.S.C. 355(c)(2)) imposes a similar patent submission obligation on holders of approved NDAs that requires patent information be submitted after NDA approval when the NDA holder could not have submitted the patent information with its application. Under section 505(c)(2) of the FD&C Act, we publish the patent information upon its submission.

FDA regulations at § 314.50(h) and § 314.53 (21 CFR 314.50(h) and 314.53) implement these statutory requirements and clarify the types of patent information that must and must not be submitted to FDA as part of an NDA, an amendment, or a supplement. The regulations under § 314.53 direct sponsors of an NDA, an amendment, or a supplement, to make detailed patent declarations using Forms FDA 3542 and 3542a as appropriate. While the information collection burden for submitting other required elements of an NDA, an amendment, or supplement in accordance with § 314.50(a) through (f), and (k) is approved under OMB control number 0910–0001, this information collection identifies burden associated with patent submission and listing, as explained below.

Specifically, a patent declaration is required for each "patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product" (§ 314.53(b)). Such patents claim the drug substance (active ingredient), drug product (formulation and composition), or method of use. Within 30 days after the date of approval of an application, the applicant must submit Form FDA 3542 for each patent that claims the drug substance (active ingredient), drug product (formulation and composition), or approved method of use for listing in the Orange Book. In addition, for patents issued after the date of approval of an application, Form FDA 3542 must be submitted within 30 days of the date of issuance of the patent. If a patent is issued after the application is filed with FDA, but before the application is approved, the applicant must submit the required patent information on Form FDA 3542a as an amendment to the application, within 30 days of the date of issuance of the patent.

Description of Respondents: The respondents to this collection of information are sponsors of an NDA, an amendment, or a supplement, or submitting information on a patent after NDA approval.

In the **Federal Register** of February 2, 2016 (81 FR 5465), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. One comment was received but was not responsive to the four collection of information topics solicited and is therefore not addressed.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR 314.50 and 314.53	Number of respondents	Number of responses per respondent	Total annual responses	Burden per response	Total hours
Form FDA 3542; patent information submitted upon and after approval of an NDA or supplement	200	3.4	680	5	3,400
Form FDA 3542a; patent information submitted with the filing of an NDA, amendment, or supplement	241	3.4	819	20	16,380
Total					19,780

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of patents submitted to FDA for listing in the Orange Book in 2012, 2013, and 2014 were 458, 509, and 617, respectively, for an annual average of 528 patents ([458 + 509 + 617]/3 years = 528). Because many of these individual patents are included in multiple NDA submissions, there may be multiple declarations for a single patent. From our review of submissions, we believe that approximately 14 percent of the patents submitted are included in multiple NDA submissions and thus require multiple patent declarations. Therefore, we estimate that 74 patents (528 × 14 percent) will be multiple listings for a total of 602 patents (528 + 74 = 602) as declared on Form FDA 3542. We approved 86, 94, and 107 NDAs in calendar years 2012, 2013, and 2014, respectively, of which we estimate 71 percent submitted patent information for listing in the Orange Book. The remaining Form FDA 3542 submissions declared that there were no relevant patents.

We also approved approximately 101, 101, and 110 NDA supplements in FYs 2012, 2013, and 2014, respectively, for which submission of a patent declaration would be required. Based on an average of 96 NDA approvals and 104 supplement approvals annually, we estimate there will be 200 instances where an NDA holder would be affected by the patent declaration requirements, and that each of these NDA holders would, on average, submit 3.4 declarations (602 patent declarations + 74 no relevant patent declarations)/200 instances = 3.4 declarations per instance) on Form FDA 3542. We filed 112, 116, and 113 NDAs in 2012, 2013, and 2014, respectively, and 112, 112, 156 NDA supplements in 2012, 2013, and 2014, respectively, for which submission of a patent declaration would be required. Based upon informal communications with industry and our experience with the collection, we estimate it will take 5 hours to complete Form FDA 3542.

We estimate there will be 241 instances (based on an average of 114 NDAs filed and 127 NDA supplements filed per year) where an NDA holder would comply with the patent declaration requirements. We estimate, based on a proportional increase from the number of declarations for approved NDAs, that there will be an annual total of 819 such declarations (241 × 3.4 declarations per instance = 819). Based upon informal communications with industry and our experience with the collection, we estimate it will take 20 hours to complete Form FDA 3542a.

Dated: August 5, 2016.

Jeremy Sharp,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2016–19385 Filed 8–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Facilitating Anti-Infective Drug Development for Neonates and Young Infants; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop regarding anti-infective drug development for neonates and young infants. FDA is interested in discussing the scientific challenges pertaining to development of anti-infective products for neonates and young infants. This public workshop is intended to provide information for and gain perspective from health care providers, other U.S. Government Agencies, public health organizations, academic experts, and industry on various aspects of drug development for new and currently marketed anti-infective drugs for neonates and young infants. The input from this public workshop will also help in developing topics for future discussion.

DATES: The public workshop will be held on September 15, 2016, from 8:30 a.m. to 4:30 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration information.

ADDRESSES: The public workshop will be held at the Sheraton Silver Spring Hotel, 8777 Georgia Ave., Silver Spring, MD 20910. The hotel's phone number is 301–589–0800.

FOR FURTHER INFORMATION CONTACT: Lori Benner and/or Jessica Barnes, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6221, Silver Spring, MD 20993–0002, 301–796–1300.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop regarding anti-infective drug development for neonates and young infants. Discussions will focus on challenges related to enrolling neonates and young infants in clinical trials, strategies to assess central nervous system (CNS) penetration of the drug, including nonclinical and in vitro data, potential development pathways, and the role of clinical trial networks in anti-infective drug development in the neonatal population.

Registration: Registration is free for the public workshop. Interested parties are encouraged to register early. Seating will be available on a first-come, first-served basis. To register electronically, email registration information (including name, title, firm name, address, telephone, and fax number) to *NeonatalAntibacterialWorkshop2016@fda.hhs.gov.* Persons without access to the Internet can call 301–796–1300 to register.

If you need special accommodations due to a disability, please contact Jessica Barnes or Lori Benner (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

Agenda: The workshop draft Agenda will be made available at: *http://www.fda.gov/Drugs/NewsEvents/ucm507958.htm* at least 2 days prior to the meeting. The Agency encourages individuals, industry, health care professionals, researchers, public health organizations and other interested persons to attend this public workshop.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.* Transcripts will also be available on the Internet at: *http://www.fda.gov/Drugs/NewsEvents/ucm507958.htm* approximately 45 days after the workshop.

Dated: August 8, 2016.

Jeremy Sharp,

Deputy Commissioner for Policy, Planning, Legislation and Analysis.

[FR Doc. 2016–19336 Filed 8–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Allergenic Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Allergenic Products Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held on October 27, 2016, from 1 p.m. to 4:20 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Janie Kim or Denise Royster, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 301–796–9016 or 240–402–8158, email: *Janie.Kim@fda.hhs.gov* or *Denise.Royster@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting. For those unable to attend in person, the meeting will also be available via Web cast. The Web cast will be available at the following link: *https://collaboration.fda.gov/apac1016/.*

SUPPLEMENTARY INFORMATION: *Agenda:* On October 27, 2016, the committee will meet by teleconference. In open session, the committee will hear updates of research programs in the Laboratory of Immunobiochemistry of the Division of Bacterial, Parasitic and Allergenic Products (DBPAP), Office of Vaccines Research and Review, Center for Biologics Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: On October 27, 2016, from 1 p.m. to 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 13, 2016. Oral presentations from the public will be scheduled between approximately 2:30 p.m. and 3:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 4, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 5, 2016.

Closed Committee Deliberations: On October 27, 2016, the meeting will be closed from 3:35 p.m. to 4:20 p.m. to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Janie Kim at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 9, 2016.

Janice M. Soreth,

Acting Associate Commissioner, Special Medical Programs.

[FR Doc. 2016–19338 Filed 8–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0217]

Premarket Notification Submissions for Electrosurgical Devices for General Surgery; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled "Premarket Notification (510(k)) Submissions for Electrosurgical Devices for General Surgery." FDA has developed this guidance document to assist industry in preparing premarket notification (510(k)) submissions for electrosurgical devices intended for use in general surgery.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–D–0217 for "Premarket Notification (510(k)) Submissions for Electrosurgical Devices for General Surgery." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled "Premarket Notification (510(k)) Submissions for Electrosurgical Devices for General Surgery" to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Jismi Johnson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1524, Silver Spring, MD 20993–0002, 301–796–6424.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has developed this guidance document to assist industry in preparing premarket notification (510(k)) submissions for electrosurgical devices intended for use in general surgery. These devices are designed to cut and/or remove tissue and control bleeding through the use of high-frequency electrical current. For the purpose of this guidance, electrosurgical devices may also be called radiofrequency devices or high-frequency devices. The scope of this document is limited to the class II electrosurgical devices and accessories classified under 21 CFR 878.4400, *Electrosurgical cutting and coagulation device and accessories.*

In the **Federal Register** of March 24, 2014 (79 FR 16008), FDA announced the availability of the draft guidance. Interested persons were invited to comment by June 23, 2014. A total of six sets of comments were received. FDA reviewed and considered all the public comments received and revised sections of the guidance, where applicable.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on premarket notification (510(k)) submissions for electrosurgical devices for general surgery. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of "Premarket Notification (510(k)) Submissions for Electrosurgical Devices for General Surgery" may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1835 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; and the collections of information in the guidance document "Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff" have been approved under OMB control number 0910–0756.

Dated: August 9, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–19404 Filed 8–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Request for Nominations on the Tobacco Products Scientific Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of a nonvoting member to represent the interests of tobacco growers to serve on the Tobacco Products Scientific Advisory Committee for the Center for Tobacco Products (CTP), notify FDA in writing. FDA is also requesting nominations for a nonvoting member to represent the interests of tobacco growers to serve on the Tobacco Products Scientific Advisory Committee, and an alternate to this representative. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations

will be accepted for current vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent the interests of tobacco growers must send a letter stating that interest to FDA by *September 14, 2016* (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by September 14, 2016.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process should be sent to Caryn Cohen (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives should be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal at: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's Web site at: *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Caryn Cohen, Office of Science, Center for Tobacco Products, Food and Drug Administration, Center for Tobacco Products, Document Control Center, Bldg. 71, Rm. G335, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 1–877–287–1373 (choose Option 5), email: *TPSAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency intends to add nonvoting industry representatives to the following advisory committee:

I. Tobacco Products Scientific Advisory Committee

The Tobacco Products Scientific Advisory Committee (the Committee) advises the Commissioner of Food and Drugs (the Commissioner) or designee in discharging responsibilities related to the regulation of tobacco products. The Committee reviews and evaluates safety, dependence, and health issues relating to tobacco products and provides appropriate advice, information, and recommendations to the Commissioner.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent the interests of tobacco growers should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations, and a list of all nominees along with their current résumés. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent the interests of tobacco growers for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent the interests of tobacco growers.

III. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting member to represent the interests of tobacco growers. Contact information, current curriculum vitae, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA seeks to include the views of women, and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 9, 2016.

Janice M. Soreth,

Acting Associate Commissioner, Special Medical Programs.

[FR Doc. 2016–19312 Filed 8–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0218]

Premarket Notification Submissions for Bipolar Electrosurgical Vessel Sealers for General Surgery; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled "Premarket Notification (510(k)) Submissions for Bipolar Electrosurgical Vessel Sealers for General Surgery." FDA has developed this guidance document to assist industry in preparing premarket notification (510(k)) submissions for bipolar electrosurgical vessel sealers intended for use in general surgery.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–D–0218 for "Premarket Notification (510(k)) Submissions for Bipolar Electrosurgical Vessel Sealers for General Surgery." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled "Premarket Notification (510(k)) Submissions for Bipolar Electrosurgical Vessel Sealers for General Surgery" to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Jismi Johnson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1524, Silver Spring, MD 20993–0002, 301–796–6424.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has developed this guidance document to assist industry in preparing premarket notification (510(k)) submissions for bipolar electrosurgical vessel sealers intended for use in general surgery. These devices are designed to seal isolated blood and lymphatic vessels for hemostasis (as an alternative to ties) through the use of high-frequency electrical current between two electrodes in close proximity. The scope of this document is limited to the class II electrosurgical devices and accessories classified under 21 CFR 878.4400, *Electrosurgical cutting and coagulation device and accessories.* This generic type of device includes bipolar vessel sealing instruments, associated electrosurgical generators, and accessories for use in open and minimally invasive general surgical procedures. This guidance is intended only to address bipolar electrosurgical vessel sealers that have general indications for use in general surgery.

In the **Federal Register** of March 24, 2014 (79 FR 16009), FDA announced the availability of the draft guidance. Interested persons were invited to comment by June 23, 2014. Four sets of comments were received. FDA reviewed and considered all the public comments received and revised sections of the guidance, where applicable.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on Premarket Notification (510(k)) Submissions for Bipolar Electrosurgical Vessel Sealers for General Surgery. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of "Premarket Notification (510(k)) Submissions for Bipolar Electrosurgical Vessel Sealers for General Surgery" may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1300048 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 58 have been approved under OMB control number 0910–0119; and the collections of information in the guidance document "Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff" have been approved under OMB control number 0910–0756.

Dated: August 9, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–19402 Filed 8–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Single-Award Deviation From Competition Requirements for the National Center for Medical Home Implementation Cooperative Agreement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Single-Award Deviation from Competition Requirements for the National Center for Medical Home Implementation Cooperative Agreement.

SUMMARY: HRSA announces the award of a supplement in the amount of $300,000 per year for two years for the National Center for Medical Home Implementation (NCMHI) Cooperative Agreement cooperative agreement. The purpose of the NCMHI cooperative agreement, as stated in the funding opportunity announcement, is to: (1) Support a national resource and assistance effort to implement and spread the medical home model to all children and youth, particularly children with special health care needs (CSHCN), children who are vulnerable and/or medically underserved, and pediatric populations served by state public health programs, MCHB and HRSA; and (2) support activities of the Healthy Tomorrows Partnership for Children Program (HTPCP) grantees to improve children's health through innovative community-based efforts, and community and statewide partnerships among professionals in health, education, social services, government, and business. The supplement will permit the American Academy of Pediatrics (AAP), the cooperative agreement awardee, during the budget periods of 7/1/2016–6/30/2017 and 7/1/2017–6/30/2018, to provide technical assistance to the Rural IMPACT communities as they employ two-generation strategies to more effectively support children living in poverty in rural communities, including the implementation and spread of the family-centered medical home model of health care.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: The American Academy of Pediatrics.

Amount of Non-Competitive Awards: $600,000.

Period of Supplemental Funding: 7/1/2016–6/30/2017 and 7/1/2017–6/30/2018.

CFDA Number: 93.110.

Authority: Social Security Act, Title V, sections 501(a)(1)(D) and 501(a)(2), (42 U.S.C. 701(a)(1)(D) and 701(a)(2)).

Justification: The White House Rural Council initiated the Rural IMPACT project to support improved well-being and upward economic mobility of children in rural and tribal communities. Ideally, systems and services are designed to meet family's needs, and are linked together so that families can access them seamlessly through universal "no wrong door" intake processes and shared referral networks. Components of the Rural IMPACT project include Healthy Start, Early Head Start, Head Start, Home Visiting, WIC, Medical Home, Quality Child Care Education Job Training and income and nutrition supports such as TANF cash assistance, Supplemental Security Income, and the Supplemental Nutrition Assistance Program. The goal of Rural IMPACT is to ensure the healthy development of at-risk children and increase the education and employment opportunities of their parents, thereby improving the well-being of families.

Rural IMPACT project continues to be a high priority of the White House Rural Council, and support for the ten Rural IMPACT communities will continue to be an interagency effort including, in addition to HHS, the Departments of Agriculture, Education, Labor, and the Corporation for National and Community Service.

The purpose of the NCMHI cooperative agreement, as stated in the funding opportunity announcement, is to: (1) Support a national resource and assistance effort to implement and spread the medical home model to all children and youth, particularly children with special health care needs (CSHCN), children who are vulnerable and/or medically underserved, and pediatric populations served by state public health programs, MCHB and HRSA; and (2) support activities of the Healthy Tomorrows Partnership for Children Program (HTPCP) grantees to improve children's health through innovative community-based efforts, and community and statewide partnerships among professionals in health, education, social services, government, and business. The Rural IMPACT Project activities align with the current project plan, as the NCMHI advances system changes and new initiatives at the community, state, and national levels, building on community partnerships to support family-centered medical home implementation for all children and youth, particularly those underrepresented and from diverse communities (Goal 3).

In 2013, following objective review of its application, HRSA awarded the NCMHI cooperative agreement to the American Academy of Pediatrics (AAP), a nonprofit, tax-exempt organization under Internal Revenue Code 501(c)(3). In 2015, HRSA awarded a $300,000 supplement to the NCMHI cooperative agreement to allow the AAP to build on its existing work under the cooperative agreement to implement and spread the medical home model in Rural IMPACT project communities, thereby advancing the well-being of children in those communities.

From August 2015 to June 2016, AAP, as part of the NCMHI cooperative agreement, established an expert workgroup and operational structure to guide the initiative; developed and issued a solicitation and scoring process, and conducted a review of applications to make recommendations for participating communities. Since the identification of ten rural and tribal communities, the AAP has provided technical assistance to support their efforts to develop and begin implementing two-generation service delivery models to address the needs of both vulnerable children and their parents.

From July 2016 to June 2018, the ten participating communities will implement their action plans. Ongoing support is needed to assist the communities in implementation as well as evaluation, sustainability, and dissemination of information. This supplement will provide additional funds, through the NCMHI cooperative agreement, to provide technical assistance to the Rural IMPACT communities as they employ two-generation strategies to more effectively support children living in poverty in rural communities, including the implementation and spread of the family-centered medical home model of health care.

FOR FURTHER INFORMATION CONTACT: Marie Y. Mann, MD, MPH, FAAP, Division of Services for Children with Special Health Needs, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 13–103, Rockville, Maryland 20857; *MMann@hrsa.gov.*

Grantee/organization name	Grant No.	State	FY 2016 authorized funding level	FY 2016 estimated supplemental funding	FY 2017 authorized funding level	FY 2017 estimated supplemental funding
The American Academy of Pediatrics	U43MC09134	IL	$800,031	$300,000	$800,031	$300,000

Dated: August 8, 2016.

James Macrae,

Acting Administrator.

[FR Doc. 2016–19347 Filed 8–12–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Availability: Test Tools and Test Procedures Approved by the National Coordinator for the ONC Health IT Certification Program

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the availability of test procedures and the Cypress version 3.0 test tool approved by the National Coordinator for Health Information Technology (the National Coordinator) for the testing of Health IT Modules to four 2015 Edition health information technology (health IT) certification criteria under the ONC Health IT Certification Program.

FOR FURTHER INFORMATION CONTACT: Alicia Morton, Director, Office of Certification, Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION: The ONC Health IT Certification Program ("Program") was first established as the Temporary Certification Program in a final rule published on June 24, 2010 ("Temporary Certification Program final rule" (75 FR 36158)). It was later transitioned to the Permanent Certification Program in a final rule published on January 7, 2011 ("Permanent Certification Program final rule" (76 FR 1262)). The Permanent Certification Program was renamed the ONC HIT Certification Program in a final rule published on September 4, 2012 (*77 FR 54163*) ("2014 Edition final rule"), and subsequently renamed the ONC Health IT Certification Program in a final rule published on October 16, 2015 (*80 FR 62601*) ("2015 Edition final rule"). In the preamble of the Permanent Certification Program final rule, we stated that when the National Coordinator for Health Information Technology (National Coordinator) has approved test tools and test procedures for certification criteria adopted by the Secretary, that ONC would publish a notice of availability in the **Federal Register** and identify the approved test tools and test procedures on the ONC Web site.

In the 2015 Edition final rule, the Secretary adopted additional and revised certification criteria (80 FR 62601) and on February 4, 2016, the National Coordinator approved test tools and test procedures for testing Health IT Modules for the majority of the 2015 Edition certification criteria under the ONC Health IT Certification Program. ONC then published the "Notice of Availability: 2015 Edition Test Tools and Test Procedures Approved by the National Coordinator for the ONC Health IT Certification Program" in the **Federal Register** (81 FR 6022). However, that publication of approved test tools and test procedures did not include the 2015 Edition certification criteria specifically related to electronic clinical quality measurement (eCQM) in order to allow for alignment of those testing tools and test procedures with the timing of the CMS annual update of the eCQM specifications.

The National Coordinator has recently approved the test tools and test procedures for testing Health IT modules for four 2015 Edition certification criteria related to clinical quality measurement. The approved test tools and test procedures for the 2015 Edition "Clinical Quality Measures—record and export" certification criterion (§ 170.315(c)(1)), "Clinical Quality Measures—import and calculate" certification criterion (§ 170.315(c)(2)), "Clinical Quality Measures—report" certification criterion (§ 170.315(c)(3)), and the "Clinical Quality Measures—filter" certification criterion (§ 170.315(c)(4)) are identified on the ONC Web site at: *https://www.healthit.gov/policy-researchers-implementers/2015-edition-test-method.* The test tools and test procedures that were previously approved by the National Coordinator (81 FR 6022) for the 2015 Edition certification criteria are also available for review at the Web site listed above.

Authority: 42 U.S.C. 300jj–11.

Karen B. DeSalvo,

National Coordinator for Health Information Technology.

[FR Doc. 2016–19203 Filed 8–12–16; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: October 14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Room 2127D, Bethesda, MD 20892, (301) 435–6916, *kielbj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 9, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19277 Filed 8–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: September 8, 2016.

Closed: 9:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: 11:00 a.m. to 4:15 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Susan R.B. Weiss, Ph.D., Director, Division of Extramural Research, Office of the Director, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, NSC, Room 5274, MSC 9591, Rockville, MD 20892, 301–443–6487, *sweiss@nida.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: August 9, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19279 Filed 8–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications/contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Contract Proposals Topic 015, PHS 2016–1.

Date: September 8, 2016.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA/NIDA Joint T32 Training Review.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Persons: Richard A. Rippe, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov.*

Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 4245, Bethesda, MD 20892, 301–827–5817, *susan.mcguire@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: August 9, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19276 Filed 8–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Genomics Portal (GenPort).

Date: September 7, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: The Westin Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 9, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19275 Filed 8–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Subcommittee.

Date: October 21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Room 2121D, Bethesda, MD 20892, (301) 435–6878, *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 9, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19278 Filed 8–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0466]

Waterway Suitability Assessment for Expansion of Liquefied Natural Gas Facility; Ingleside, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Coast Guard, at Sector Corpus Christi, announces receipt of a Letter of Intent (LOI) and Waterways Suitability Assessment (WSA) for a construction project expanding a Federal Energy Regulatory Commission (FERC) approved Liquefied Natural Gas (LNG) facility in Ingleside, Texas. The LOI and WSA were submitted by Rodino, Inc. on behalf of Cheniere's Corpus Christi Liquefaction (CCL) Project. The Coast Guard is notifying the public of this action to solicit public comments on the proposed expansion of LNG facilities.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before September 14, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0466 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document: call or email MST2 Rebekah Wagner, Sector Corpus Christi Waterways Management Division, Coast Guard; telephone 361–888–3162, *Rebekah.S.Wagner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Comments

We encourage you to submit comments (or related materials) on this notice for the waterway suitability assessment for the expansion of an LNG facility, as defined by 33 CFR 127.005. We will consider all submissions and may adjust our final action based on your comments. If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Discussion

Under 33 CFR 127.007, an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling LNG or Liquefied Hazardous Gas (LHG), where the construction, expansion, or modification would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with a proposed facility or modification to an existing facility, must submit an LOI to the Captain of the Port (COTP) of the zone in which the facility is or will be located. Under 33 CFR 127.009, after receiving an LOI, the COTP issues a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG or LHG marine traffic to the appropriate jurisdictional authorities. The LOR is based on a series of factors outlined in 33 CFR 127.009 that relate to the physical nature of the affected waterway and issues of safety and security associated with LNG or LHG marine traffic on the affected waterway.

The purpose of this notice is to solicit public comments on the proposed construction and expansion project related to a FERC approved LNG facility as submitted by Rodino, Inc. on behalf of Cheniere's CCL Project in Corpus Christi, Texas. Input from the public may be useful to the COTP with respect to developing the LOR. The Coast Guard requests comments to help assess the suitability of the associated waterway for increased LNG marine traffic as it relates to navigation, safety, and security.

On January 24, 2011, the Coast Guard published Navigation and Vessel Inspection Circular (NVIC) 01–2011, "Guidance Related to Waterfront Liquefied Natural Gas (LNG) Facilities." NVIC 01–2011 provides guidance for owners and operators seeking approval to construct and operate LNG facilities. The Coast Guard will refer to NVIC 01–2011 for process information and guidance in evaluating the project included in the LOI and WSA submitted by Rodino, Inc. A copy of NVIC 01–2011 is available for viewing in the public docket for this notice and also on the Coast Guard's Web site at *http://www.uscg.mil/hq/cg5/nvic/pdf/2011/NVIC%2001–2011%20Final.pdf.*

This notice is issued under authority of 33 U.S.C. 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation Number 0170.1(70), 33 CFR 127.009, and 33 CFR 103.205.

Dated: July 28, 2016.

M.T. Cunningham,

Captain, U.S. Coast Guard, Acting Captain of the Port Corpus Christi, TX.

[FR Doc. 2016–19282 Filed 8–12–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4275–DR; Docket ID FEMA–2016–0001]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–4275–DR), dated August 3, 2016, and related determinations.

DATE: *Effective Date:* August 3, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 3, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

> I have determined that the damage in certain areas of the State of Montana resulting from a tornado on June 11, 2016, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Montana.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.
>
> Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Montana have been designated as adversely affected by this major disaster:

Fallon County for Public Assistance.

All areas within the State of Montana are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–19287 Filed 8–12–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4272–DR; Docket ID FEMA–2016–0001]

Texas; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4272–DR), dated June 11, 2016, and related determinations.

DATES: *Effective Date:* August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 11, 2016.

Hall County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–19292 Filed 8–12–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4272–DR; Docket ID FEMA–2016–0001]

Texas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4272–DR), dated June 11, 2016, and related determinations.

DATES: *Effective Date:* July 25, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 11, 2016.

Hardin, Navarro, and Throckmorton Counties for Public Assistance.

Burleson and Liberty Counties for Public Assistance (already designated for Individual Assistance.)

Austin, Brazoria, Montgomery, and Waller Counties for Public Assistance [Categories A and C–G] (already designated for Individual Assistance and emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program.)

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–19291 Filed 8–12–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4272–DR; Docket ID FEMA–2016–0001]

Texas; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–4272–DR), dated June 11, 2016, and related determinations.

DATES: *Effective Date:* August 1, 2016

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is now May 22, 2016, through and including June 24, 2016.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–19286 Filed 8–12–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1635]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 2, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama: Shelby ...	City of Alabaster (16–04–2252P).	The Honorable Marty Handlon, Mayor, City of Alabaster, 1953 Municipal Way, Alabaster, AL 35007.	Building Safety Department, 200 Depot Street, Alabaster, AL 35007.	*http://www.msc.fema.gov/lomc*	Sep. 8, 2016	010192
Arkansas:						
Washington	City of Johnson (15–06–2898P).	The Honorable Chris Keeney, Mayor, City of Johnson, P.O. Box 563, Johnson, AR 72704.	City Hall, 2904 Main Drive, Johnson, AR 72704.	*http://www.msc.fema.gov/lomc*	Sep. 8, 2016	050218
Washington	City of Springdale (15–06–2898P).	The Honorable Doug Sprouse, Mayor, City of Springdale, 201 Spring Street, Springdale, AR 72764.	Planning and Community Development Department, 201 Spring Street, Springdale, AR 72764.	*http://www.msc.fema.gov/lomc*	Sep. 8, 2016	050219
Connecticut: Fairfield.	Town of Stratford (15–01–1945P).	The Honorable John A. Harkins, Mayor, Town of Stratford, 2725 Main Street, Stratford, CT 06615.	Engineering Department, 2725 Main Street, Stratford, CT 06615.	*http://www.msc.fema.gov/lomc*	Aug. 5, 2016	090016
Florida:						
Broward	City of Hollywood (15–04–6825P).	The Honorable Peter J. M. Bober, Mayor, City of Hollywood, 2600 Hollywood Boulevard, Suite 403, Hollywood, FL 33020.	Planning Division, 2600 Hollywood Boulevard, Suite 304, Hollywood, FL 33020.	*http://www.msc.fema.gov/lomc*	Sep. 7, 2016	125113
Hillsborough ...	City of Tampa (16–04–2659P).	The Honorable Bob Buckhorn, Mayor, City of Tampa, 306 East Jackson Street, Tampa, FL 33602.	Development Services Center, 1400 North Boulevard, Tampa, FL 33607.	*http://www.msc.fema.gov/lomc*	Aug. 23, 2016	120114
Lee	Unincorporated areas of Lee County (15–04–9900P).	The Honorable Frank Mann, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	*http://www.msc.fema.gov/lomc*	Sep. 7, 2016	125124

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Lee	Unincorporated areas of Lee County (16–04–2127P).	The Honorable Frank Mann, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	*http://www.msc.fema.gov/lomc*	Sep. 5, 2016	125124
Lee	Unincorporated areas of Lee County (16–04–2912P).	The Honorable Frank Mann, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	*http://www.msc.fema.gov/lomc*	Sep. 6, 2016	125124
Miami-Dade	Village of Miami Shores Village (15–04–5104P).	The Honorable Alice Burch, Mayor, Village of Miami Shores Village, 10050 Northeast 2nd Avenue, Miami Shores Village, FL 33138.	Planning and Zoning Department, 10050 Northeast 2nd Avenue, Miami Shores Village, FL 33138.	*http://www.msc.fema.gov/lomc*	Sep. 9, 2016	120652
Monroe	City of Key West (16–04–3139P).	The Honorable Craig Cates, Mayor, City of Key West, P.O. Box 1409, Key West, FL 33041.	Building Department, 3140 Flagler Avenue, Key West, FL 33040.	*http://www.msc.fema.gov/lomc*	Sep. 9, 2016	125129
Monroe	Unincorporated areas of Monroe County (16–04–3138P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Key West, FL 33050.	*http://www.msc.fema.gov/lomc*	Aug. 25, 2016	125129
Monroe	Unincorporated areas of Monroe County (16–04–3255P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Key West, FL 33050.	*http://www.msc.fema.gov/lomc*	Sep. 1, 2016	125129
St. Johns	Unincorporated areas of St. Johns County (15–04–4235P).	The Honorable Jeb Smith, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32084.	*http://www.msc.fema.gov/lomc*	Sep. 5, 2016	125147
Georgia: Grady	Unincorporated areas of Grady County (16–04–0690P).	The Honorable Charlie Norton, Chairman, Grady County Board of Commissioners, 250 North Broad Street, Cairo, GA 39828.	Grady County Code Enforcement Division, 250 North Broad Street, Cairo, GA 39828.	*http://www.msc.fema.gov/lomc*	Aug. 18, 2016	130096
Maryland: Frederick.	City of Frederick (16–03–0095P).	The Honorable Randy McClement, Mayor, City of Frederick, 101 North Court Street, Frederick, MD 21701.	Engineering Department, 140 West Patrick Street, Frederick, MD 21701.	*http://www.msc.fema.gov/lomc*	Aug. 31, 2016	240030
Mississippi:						
Rankin	City of Flowood (16–04–1696P).	The Honorable Gary Rhoads, Mayor, City of Flowood, P.O. Box 320069, Flowood, MS 39232.	Engineering Department, 109 Woodline Drive, Flowood, MS 39232.	*http://www.msc.fema.gov/lomc*	Aug. 18, 2016	280289
Rankin	City of Jackson (16–04–1696P).	The Honorable Tony Yarber, Mayor, City of Jackson, P.O. Box 17, Jackson, MS 39205.	Public Works Department, 200 South President Street, Jackson, MS 39205.	*http://www.msc.fema.gov/lomc*	Aug. 18, 2016	280072
Montana: Stillwater	Unincorporated areas of Stillwater County (15–08–0567P).	The Honorable Dennis Shupak, Chairman, Stillwater County Board of Commissioners, 400 East 3rd Avenue North, Columbus, MT 59019.	Floodplain Administrator's Office, 431 Quarry Road, Columbus, MT 59019.	*http://www.msc.fema.gov/lomc*	Sep. 9, 2016	300078
North Dakota:						
Dunn	City of Killdeer (16–08–0302X).	The Honorable Chuck Muscha, President, City of Killdeer Council, P.O. Box 270, Killdeer, ND 58640.	Planning and Zoning Department, 165 Railroad Street, Killdeer, ND 58640.	*http://www.msc.fema.gov/lomc*	Jul. 18, 2016	380030
Dunn	Unincorporated areas of Dunn County (16–08–0302X).	The Honorable Reinhard Hauck, Chairman, Dunn County Board of Commissioners, 205 Owens Street, Manning, ND 58642.	Dunn County Planning and Zoning Department, 205 Owens Street, Manning, ND 58642.	*http://www.msc.fema.gov/lomc*	Jul. 18, 2016	380026

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Oklahoma: Oklahoma.	City of Edmond (15–06–2036P).	The Honorable Charles Lamb, Mayor, City of Edmond, P.O. Box 2970, Edmond, OK 73083.	Engineering/Drainage Utility Department, 10 South Littler Avenue, Edmond, OK 73084.	*http://www.msc.fema.gov/lomc*	Sep. 8, 2016	400252
Rhode Island:						
Washington	Town of Charlestown (15–01–2168P).	The Honorable Thomas B. Gentz, President, Town of Charlestown Council, 4540 South County Trail, Charlestown, RI 02813.	Building Officials Office, 4540 South County Trail, Charlestown, RI 02813.	*http://www.msc.fema.gov/lomc*	Aug. 26, 2016	445395
Washington	Town of Richmond (15–01–2168P).	The Honorable Henry Oppenheimer, President, Town of Richmond Council, 5 Richmond Townhouse Road, Wyoming, RI 02898.	Town Hall, 5 Richmond Townhouse Road, Wyoming, RI 02898.	*http://www.msc.fema.gov/lomc*	Aug. 26, 2016	440031
South Dakota: Lawrence.	City of Spearfish (16–08–0178P).	The Honorable Dana Boke, Mayor, City of Spearfish, 625 5th Street, Spearfish, SD 57783.	City Hall, 625 5th Street, Spearfish, SD 57783.	*http://www.msc.fema.gov/lomc*	Sep. 5, 2016	460046
Tennessee: Blount	City of Maryville (16–04–1499P).	The Honorable Tom Taylor, Mayor, City of Maryville, 404 West Broadway Avenue, Maryville, TN 37801.	Engineering and Public Works Department, 416 West Broadway Avenue, Maryville, TN 37801.	*http://www.msc.fema.gov/lomc*	Aug. 24, 2016	475439
Texas:						
Comal	Unincorporated areas of Comal County (15–06–4497P).	The Honorable Sherman Krause, Comal County Judge, 150 North Seguin Avenue, New Braunfels, TX 78130.	Comal County Engineering Department, 195 David Jonas Drive, New Braunfels, TX 78132.	*http://www.msc.fema.gov/lomc*	Aug. 25, 2016	485463
Comal	Unincorporated areas of Comal County (16–06–0368P).	The Honorable Sherman Krause, Comal County Judge, 150 North Seguin Avenue, New Braunfels, TX 78130.	Comal County Engineering Department, 195 David Jonas Drive, New Braunfels, TX 78132.	*http://www.msc.fema.gov/lomc*	Aug. 24, 2016	485463
Dallas	City of Grand Prairie (16–06–1120P).	The Honorable Ron Jensen, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, TX 75053.	City Development Center, 206 West Church, Grand Prairie, TX 75050.	*http://www.msc.fema.gov/lomc*	Aug. 22, 2016	485472
Fort Bend	City of Rosenberg (14–06–4590P).	The Honorable Cynthia A. McConathy, Mayor, City of Rosenberg, 2110 4th Street, Rosenberg, TX 77471.	City Hall, 2220 4th Street, Rosenberg, TX 77471.	*http://www.msc.fema.gov/lomc*	Aug. 25, 2016	480232
Harris	City of Houston (16–06–1652P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Office, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.	*http://www.msc.fema.gov/lomc*	Aug. 26, 2016	480296
Hood	City of Granbury (15–06–0390P).	The Honorable Nin Hulett, Mayor, City of Granbury, 116 West Bridge Street, Granbury, TX 76048.	City Hall, 116 West Bridge Street, Granbury, TX 76048.	*http://www.msc.fema.gov/lomc*	Aug. 18, 2016	480357
Hood	Unincorporated areas of Hood County (15–06–0390P).	The Honorable Darrell Cockerham, Hood County Judge, 100 East Pearl Street, Granbury, TX 76048.	Hood County Environmental Health Department, 201 West Bridge Street, Granbury, TX 76048.	*http://www.msc.fema.gov/lomc*	Aug. 18, 2016	480356
Tarrant	Unincorporated areas of Tarrant County (15–06–4328P).	The Honorable B. Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196.	Tarrant County Transportation Services Department, 100 East Weatherford Street, Suite 401, Fort Worth, TX 76196.	*http://www.msc.fema.gov/lomc*	Sep. 8, 2016	480582
Travis	Unincorporated areas of Travis County (15–06–4241P).	The Honorable Sarah Eckhardt, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Engineering Department, 700 Lavaca Street, 5th Floor, Austin, TX 78701.	*http://www.msc.fema.gov/lomc*	Sep. 5, 2016	481026
Webb	City of Laredo (14–06–3761P).	The Honorable Pete Saenz, Mayor, City of Laredo, P.O. Box 579, Laredo, TX 78042.	Planning and Zoning Department, 1120 San Bernardo Avenue, Laredo, TX 78040.	*http://www.msc.fema.gov/lomc*	Sep. 6, 2016	480651
Utah:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Cache	City of Hyrum (16–08–0057P).	The Honorable Stephanie Miller, Mayor, City of Hyrum, 60 West Main Street, Hyrum, UT 84319.	City Hall, 60 West Main Street, Hyrum, UT 84319.	*http://www.msc.fema.gov/lomc*	Sep. 7, 2016	490017
Salt Lake	City of Draper (15–08–1373P).	The Honorable Troy K. Walker, Mayor, City of Draper, 1020 East Pioneer Road, Draper, UT 84020.	City Hall, 1020 East Pioneer Road, Draper, UT 84020.	*http://www.msc.fema.gov/lomc*	Sep. 7, 2016	490244
Virginia:						
Loudoun	Unincorporated areas of Loudoun County (15–03–2804P).	The Honorable Phyllis J. Randall, Chair, Loudoun County Board of Supervisors, P.O. Box 7000, Leesburg, VA 20177.	Loudoun County Department of Building and Development, 1 Harrison Street Southeast, Leesburg, VA 20175.	*http://www.msc.fema.gov/lomc*	Aug. 25, 2016	510090
Loudoun	Unincorporated areas of Loudoun County (16–03–0299P).	The Honorable Phyllis J. Randall, Chair, Loudoun County Board of Supervisors, P.O. Box 7000, Leesburg, VA 20177.	Loudoun County Department of Building and Development, 1 Harrison Street Southeast, Leesburg, VA 20175.	*http://www.msc.fema.gov/lomc*	Sep. 9, 2016	510090

[FR Doc. 2016–19293 Filed 8–12–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–54]

30-Day Notice of Proposed Information Collection: FHA TOTAL (Technology Open to Approved Lenders) Mortgage Scorecard

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* September 14, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 18, 2016 at 81 FR 31252.

A. Overview of Information Collection

Title of Information Collection: FHA TOTAL (Technology Open to Approved Lenders) Mortgage Scorecard.

OMB Approval Number: 2502–0556.

Type of Request: Extension of currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: The regulation mandating this collection can be found in the Code of Federal Regulations at 24 CFR 203.255(b)(5). This information is necessary to assure that lenders (and automated underwriting system (AUS) vendors) are aware of their obligations regarding use of the TOTAL Mortgage Scorecard and are certifying that they will comply with all pertinent regulations. It also allows FHA to request reports from lenders regarding their use of the scorecard, that they have implemented appropriate quality control procedures for using the scorecard, and provides an appeal mechanism should FHA take an action to terminate a lender's use of the scorecard.

Respondents: Business or other for profit.

Estimated Number of Respondents: 2709.

Estimated Number of Responses: 100.

Frequency of Response: On Occasion.

Average Hours per Response: .02.

Total Estimated Burdens: 100.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 9, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–19403 Filed 8–12–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–56]

30-Day Notice of Proposed Information Collection: Alternative Inspections—Housing Choice Voucher Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* September 14, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 29, 2016 at 81 FR 17488.

A. Overview of Information Collection

Title of Information Collection: Alternative Inspections—Housing Choice Voucher Program.

OMB Approval Number: 2577–New.

Type of Request: New collection.

Form Number: None.

Description of the need for the information and proposed use: Under the Section 8 housing choice voucher rule, PHAs that elect to rely on an alternative inspection are required to meet the requirements of subpart I of the rule. If the inspection method and standard selected is other than HOME Investment Partnerships (HOME) program, Low-Income Housing Tax Credits (LIHTCs), or that performed by HUD, the PHA must submit a request to HUD. PHAs with approved alternative inspection standards must monitor changes to the standards and requirements of their method and if changes are made must submit to HUD a copy of the revised standards and requirements along with a revised comparison to Housing Quality Standards (HQS).

Respondents (i.e., affected public): State, Local or Tribal Governments.

Estimated Number of Respondents: 2280.

Estimated Number of Responses: 33.

Frequency of Response: 1.

Average Hours per Response: 4.

Total Estimated Burdens: 149 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Date: August 9, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–19396 Filed 8–12–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5961–N–01]

Additional Clarifying Guidance, Waivers, and Alternative Requirements for Grantees in Receipt of Community Development Block Grant (CDBG) Disaster Recovery Grant Funds Under the Disaster Relief Appropriations Act, 2013

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice provides clarifying guidance, waivers, and alternative requirements for Community Development Block Grant Disaster Recovery (CDBG–DR) grantees in receipt of funds under the Disaster Relief Appropriations Act, 2013 (the Appropriations Act). This notice modifies requirements for projects funded by the HUD-sponsored Rebuild by Design (RBD) competition, described in **Federal Register** notices published on July 29, 2013 (78 FR 45551); August 23, 2013 (78 FR 52560); October 16, 2014 (79 FR 62182); and May 11, 2015 (80 FR 26942). These changes will allow RBD grantees to submit their required subsequent Action Plan amendments before the RBD project's design has been finalized, the draft environmental impact statement has been completed and permits for the project have been issued. Additionally, this notice modifies requirements of a notice published on March 5, 2013 (78 FR 14329), to allow grantees to submit Action Plan amendments after June 1, 2017. This notice also modifies requirements for infrastructure projects funded through the allocation of CDBG–DR funds for Hurricane Sandy. Specifically, this notice provides waivers and alternative requirements for certain infrastructure projects funded by the State of New York, including the Breezy Point Storm Drainage system, as well as for New York City's Raised Shorelines program. The notice also provides a waiver of the Housing and Community Development Act of 1974 (HCDA) to authorize the State of New Jersey to use up to $30 million of CDBG–DR funds for the provision of up to 21 months of rental assistance for

participants in its single-family housing rehabilitation programs. The waiver for the State of New Jersey expires on December 31, 2017.

DATES: Effective Date: August 22, 2016.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410; telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov*.

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IV. Finding of No Significant Impact

I. Background

The Appropriations Act (Pub. L. 113–2, approved January 29, 2013) made available $16 billion in CDBG–DR funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas, resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et. seq.) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. On March 1, 2013, the President issued a sequestration order pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a) and reduced the amount of funding for CDBG–DR grants under the Appropriations Act to $15.18 billion. To date, a total of $15.18 billion has been allocated or set aside: $13 billion in response to Hurricane Sandy, $514 million in response to disasters occurring in 2011 or 2012, $655 million in response to 2013 disasters, and $1 billion for the National Disaster Resilience Competition. This notice specifies waivers and alternative requirements and modifies requirements for Hurricane Sandy grantees in receipt of allocations under the Appropriations Act, which are described in the **Federal Register** notices published by the Department on March 5, 2013 (78 FR 14329); April 19, 2013 (78 FR 23578); August 2, 2013 (78 FR 46999); November 18, 2013 (78 FR 69104); March 27, 2014 (79 FR 17173); July 11, 2014 (79 FR 40133); October 16, 2014 (79 FR 62182); April 2, 2015 (80 FR 17772); May 11, 2015 (80 FR 26942); August 25, 2015 (80 FR 51589); November 18, 2015 (80 FR 72102); and February 12, 2016 (81 FR 7567) (referred to collectively in this notice as the "prior notices").[1] The requirements of the prior notices continue to apply, except as modified by this notice.

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation, or use by the recipient, of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCDA. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

For the waivers and alternative requirements described in this notice, the Secretary has determined that good cause exists and that the waivers and alternative requirements are not inconsistent with the overall purpose of title I of the HCDA. Grantees may request waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of the Appropriations Act, waivers must be published in the **Federal Register** no later than 5 days before the effective date of such waiver.

1. Amending the Requirements for Permitting and Design of RBD projects in the Subsequent Substantial Action Plan Amendment. Paragraph VI of the October 16, 2014, **Federal Register** notice (79 FR 62182) (the RBD notice) establishes requirements for the timing of permits for RBD projects. The RBD notice requires grantees to submit a subsequent Action Plan amendment that includes a detailed description of the final RBD project "as permitted and approved from the environmental review process." Since the publication of the RBD notice, as RBD projects have progressed and grantees have further refined implementation timelines, the Department has determined that it is not feasible to reach a level of design that facilitates permit issuance prior to the June 1, 2017, deadline for submission of the subsequent substantial Action Plan amendments. Many State and Federal agencies do not grant permits until the project design is complete and construction documents are complete. To ensure that grantee submissions of the subsequent substantial Action Plan amendments are not delayed because permits have not yet been issued, HUD is amending the RBD notice at paragraph VI.4.e to read:

e. For RBD projects not requiring an Environmental Impact Statement (EIS) pursuant to the requirements of 24 CFR part 58: Grantee submits a subsequent substantial Action Plan amendment to reflect the final RBD project, as described in paragraph VI.6.b. This amendment must include a detailed description of the final RBD project as permitted and as approved through the environmental review process, or a detailed description of the RBD project as approved through the environmental review process and an explanation of why it is not possible to obtain permits at the time of submission. If the necessary permits have not been obtained at the time of the substantial Action Plan amendment submission, grantees must provide a plan that describes how and when the permits will be obtained. This amendment may be submitted prior to or concurrent with a grantee's submission of its Request for Release of Funds and Certifications (RROF). Following approval of the Action Plan amendment and RROF, funds from the grantee's line of credit will be made available for construction (proceed to paragraph VI.4.g).

Paragraph VI.4.f.ii of the RBD notice is amended to read:

> Grantee successfully stewards the RBD project through the environmental review process, pursuant to 24 CFR part 58, and any permitting processes required to implement the RBD project. If the project is not permitted, include a description of why it is not possible to obtain permits at this time and provide a plan that describes how and when the permits will be obtained.

In addition, paragraph VI.4.f.iii of the RBD notice is amended to read:

> HUD anticipates that the final EIS or other project plan development may result in material changes to the project after the grantee submits the subsequent substantial Action Plan amendment described in paragraph VI.4.f.i. If no material changes have occurred since the previous RBD project design and scope approved by HUD in the grantee's Action Plan amendment, as

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[1] Links to the prior notices, the text of the Appropriations Act, and additional guidance prepared by the Department for CDBG–DR grants, are available on the HUD Exchange Web site: *https://www.hudexchange.info/cdbg-dr/cdbg-drlaws-regulations-and-federal-register-notices/*.

> determined by the grantee in consultation with HUD, no additional amendment is necessary. If the RBD project has undergone a material change, then the grantee must submit a substantial Action Plan amendment in order to describe the final RBD project, either as permitted and as approved through the environmental review process, or including an explanation of why it is not possible to obtain permits at this time and provide a plan that describes how and when the permits will be obtained. A grantee may submit its RROF concurrent with this Action Plan amendment, if applicable, and its Record of Decision for the project. Following approval of the Action Plan amendment, if applicable, and RROF, funds from the grantee's line of credit will be made available for construction.

Paragraph VI of the RBD notice also includes requirements for the certification of design standards for RBD projects. The RBD notice requires grantees to submit a subsequent substantial Action Plan amendment in which "a registered Professional Engineer (or other design professional) must certify that the design meets the appropriate code, or industry design and construction standards." HUD has determined that for most RBD projects, project design at the time of the subsequent Action Plan amendment submission will only be preliminary. Before final RBD project designs are complete, a design professional will not have sufficient information to make this certification.

Accordingly, the third subparagraph of section VI.6.b of the RBD notice is amended to read:

> Grantees are also responsible for demonstrating that the RBD project is feasible, including having an appropriate preliminary design that will result in the benefits proposed. Grantees must certify that the preliminary design considers the appropriate code, or industry design and construction standards, and certify that the final design will adhere to all relevant codes and construction standards when it is complete. In addition, grantees must have a registered professional engineer (or other design professional) certify that the final design met the appropriate code, or industry design and construction standards, prior to obligation of funds by the grantee for construction.

2. Clarifying the Requirements of the RBD Subsequent Substantial Action Plan Amendment and the Timing of the Draft EIS. The RBD notice at paragraph VI.4.f.i includes requirements for the timeline of completing a draft EIS on an RBD project prior to or at the same time as a grantee's submission of the subsequent substantial Action Plan amendment. The RBD notice requires grantees to have a completed draft EIS by the time of the submission of the subsequent Action Plan amendment no later than June 1, 2017. This requirement was designed to ensure that the RBD project is consistent with the conceptual proposal as practicable and appropriate. HUD has determined that, as some RBD projects have progressed and implementation timelines have been refined, it may not be possible for all grantees to complete a draft EIS by June 1, 2017.

Accordingly, HUD is allowing grantees to submit a draft EIS after they have submitted their subsequent Action Plan amendment. However, as HUD noted in the RBD notice, material changes could take place at completion of the final EIS, and these changes could also occur after the subsequent substantial Action Plan amendment is approved and prior to the completion of the draft EIS. If no material changes have occurred since the previous RBD project design and scope approved by HUD in the grantee's subsequent Action Plan amendment, as determined by the grantee in consultation with HUD, no additional amendment is necessary. If the RBD project has undergone a material change after submission of the subsequent Action Plan amendment, as determined by the grantee in consultation with HUD, then the grantee must submit another substantial Action Plan amendment in order to describe the final RBD project as permitted and as approved through the environmental review process, or include an explanation of why it is not possible to obtain permits at this time and provide a plan that describes how and when the permits will be obtained. A grantee may submit its RROF concurrent with this Action Plan amendment, if applicable, and its Record of Decision for the RBD project. Following approval of the Action Plan amendment, if applicable, and RROF, funds from the grantee's line of credit will be made available for construction.

Finally, paragraph VI.4.f.i of the RBD notice is amended to read:

> i. Grantee submits a subsequent substantial Action Plan amendment to reflect the final RBD project, as described in paragraph VI.6.b. This amendment must identify the RBD project scope and design as it exists at that point. Grantees are not prohibited from proceeding with the EIS process. HUD approval of this Action Plan amendment is contingent upon whether the RBD project is consistent with the conceptual proposal as practicable and appropriate. HUD will provide clarifying guidance as to the content and format of materials that will help ensure timely approval of the Action Plan amendment under the criteria for approval of Action Plan amendments containing RBD projects described in this notice. If the Action Plan is not approved, RBD project-related costs will not be eligible following the date of disapproval until the RBD project is aligned with the RBD project as proposed in the previously approved Action Plan.

3. Clarification of RBD Expenditure Extension Requests. The May 11, 2015, **Federal Register** notice (80 FR 26942) includes requirements for grantees requesting expenditure extensions for RBD projects. Currently, a grantee may request an expenditure extension if the grant funds associated with the program or project at issue were obligated by HUD through a grant agreement, and, therefore, are already subject to an established expenditure deadline. Under the May 11, 2015, notice the timeline and planning of RBD projects are to follow the process established for National Disaster Resilience (CDBG–NDR) projects. RBD projects, like CDBG–NDR projects, have already been identified and grantees are able to more accurately estimate the time frame for completion of their projects. Grantees are not required to have obligated funds to a CDBG–NDR project prior to requesting an expenditure extension.

Accordingly, paragraph VII.2 of the May 11, 2015, **Federal Register** notice is amended to read,

> (2) The CDBG–DR funds associated with the program or project must have been obligated by HUD through a grant agreement, and, therefore, be subject to an established expenditure deadline. Rebuild by Design (RBD) projects, funded under the eligible "Rebuild by Design" activity in paragraph VII.4.c, of the notice published on October 16, 2014, are exempt from this requirement.

4. Submission of a Final Action Plan Amendment for Disaster Recovery. HUD is modifying the language in paragraph VI.A.1.a of the March 5, 2013, **Federal Register** notice regarding the submission of Action Plan amendments after June 1, 2017. The March 5, 2013, notice does not currently allow grantees to submit Action Plan amendments after June 1, 2017. While grantees must program the use of 100 percent of their allocated funds by June 1 in an approved Action Plan, HUD realizes that grantees will continue to need the flexibility of making both substantial and nonsubstantial Action Plan amendments as their programs continue to move forward and evolve after the June 1 deadline.

Accordingly, HUD is amending this language to allow grantees to submit Action Plan amendments after June 1, 2017. Subparagraph a of section VI.A.1 of the March 5, 2013, notice, as amended by the April 19, 2013, notice, is amended further to read:

> Although a grantee may submit a partial Action Plan, the partial Action Plan must be amended one or more times until it describes uses for 100 percent of the grantee's CDBG–

DR award. Due to the statutory requirement that HUD may not obligate Appropriations Act funds after September 30, 2017, grantees must submit an Action Plan amendment to HUD that provides for the allocation of 100 percent of its CDBG–DR funds for its recovery programs no later than June 1, 2017. Grantees may continue to submit Action Plan amendments after that date. The requirement, however, to expend funds within 2 years of the date of obligation will continue to be enforced relative to each partial obligation made by HUD, as applicable.

HUD is also similarly modifying paragraph VI.3.e of the November 18, 2013, **Federal Register** notice (78 FR 69109) to read:

> e. Amending the Action Plan. Paragraph 1(k) at 78 FR 14337 of the March 5, 2013, notice is amended, as necessary, to require each grantee to submit a substantial Action Plan amendment to HUD within 120 days of the effective date of this notice. All Action Plan amendments submitted after the effective date of this notice must be prepared in accordance with the prior notices, as modified by this notice. In addition, they must budget all, or a portion, of the funds allocated under this notice. Grantees are reminded that an Action Plan may be amended one or more times until it describes uses for 100 percent of the grantee's CDBG–DR award. The last date by which grantees must submit the Action Plan amendment that provides for the allocation of 100 percent of its funds for its recovery programs is June 1, 2017, given that HUD must obligate all CDBG–DR funds no later than September 30, 2017. Grantees may continue to submit Action Plan amendments after that date. The requirement, however, to expend funds within 2 years of the date of obligation will continue to be enforced relative to each partial obligation made by HUD.

Paragraph V.4(d) of the June 3, 2014, **Federal Register** notice (79 FR 31969), is also modified to read:

> d. Amending the Action Plan. The prior notices are amended, as necessary, to require each grantee to submit a substantial Action Plan amendment to HUD within 120 days of the effective date of this notice. All Action Plan amendments submitted after the effective date of this notice must be prepared in accordance with the prior notices, as modified by this notice. In addition, they must budget all, or a portion, of the funds allocated under this notice. Grantees are reminded that an Action Plan may be amended one or more times until it describes uses for 100 percent of the grantee's CDBG–DR award. The last date by which grantees must submit the Action Plan amendment that provides for the allocation of 100 percent of its funds for its recovery programs is June 1, 2017, given that HUD must obligate all CDBG–DR funds not later than September 30, 2017. Grantees may continue to submit Action Plan amendments after that date. The requirement, however, to expend funds within 2 years of the date of obligation will continue to be enforced relative to each partial obligation made by HUD.

Finally, paragraph VII.2.d of the October 16, 2014, **Federal Register** notice (79 FR 62191) is modified to read:

> d. Amending the Action Plan. Except as otherwise provided for in this notice, paragraph VI.A.1.k of the March 5, 2013 notice (at 78 FR 14337) is amended, as necessary, to require each grantee to submit a substantial Action Plan amendment to HUD within 120 days of the effective date of this notice. All Action Plan amendments submitted after the effective date of this notice must be prepared in accordance with the prior notices, as modified by this notice. In addition, they must budget all, or a portion, of the funds allocated under this notice. Grantees are reminded that an Action Plan may be amended one or more times until it describes uses for 100 percent of the grantee's CDBG–DR award. The last date for grantees to submit the Action Plan amendment that provides for the allocation of 100 percent of its funds for its recovery programs is June 1, 2017, given that HUD must obligate all CDBG–DR funds not later than September 30, 2017. Grantees may continue to submit Action Plan amendments after that date. The requirement, however, to expend funds within 2 years of the date of obligation will continue to be enforced relative to each partial obligation made by HUD.

5. Waiver of Covered project Requirements for Certain Infrastructure projects Benefiting Multiple Counties (State of New York only). Paragraph VI.2.g of the November 18, 2013, **Federal Register** notice, (at 78 FR 69107), describes additional infrastructure requirements applicable to grantees receiving an allocation of CDBG–DR funds under that notice, including requirements for covered projects. HUD approval is required for each infrastructure project that meets the definition of a covered project, defined as having a total cost of $50 million or more (including at least $10 million of CDBG–DR funds), or projects that benefit multiple counties. The **Federal Register** notice published on March 27, 2014, clarified that "benefits multiple counties" means that the project is physically located in more than one county (paragraph II.1.a, Definition of "Benefits Multiple Counties," at 78 FR 17174). The State of New York has requested an exemption from the covered project requirements for two infrastructure projects located in multiple counties and which would meet the definition of a covered project. These infrastructure projects are funded through the NY Rising Community Reconstruction (NYRCR) Program. In its request, the State contends that the NYRCR Program generally aligns with the goals of the coordination efforts that are reflected in the covered project requirements, by directly engaging local residents and business owners across neighboring communities to formulate a "grassroots" approach to rebuilding communities through investments in infrastructure. The Department, however, is providing a waiver of covered project requirements for the following two infrastructure projects identified by the State, based on the particular aspects of each project rather than on the particular components of the NYRCR Program:

a. Meadowmere Park Bridge Reconstruction project. This $2.25 million project will reconstruct an existing footbridge that was damaged by the storm. The footbridge links an isolated portion of Nassau County with a neighboring area in Queens County. The project cost is significantly less than the funding threshold established for covered projects (*i.e.,* $50 million in total project costs with at least $10 million of CDBG–DR funding), and the Department has determined that the State's investment of CDBG–DR funds to reconstruct a footbridge that existed prior to the storm, and that happens to span two counties, does not constitute the type of infrastructure investment contemplated by the Department when it decided to establish the covered project requirements.

b. Comprehensive Green Infrastructure Assessment and Implementation project. This $13.5 million project involves the assessment, design, and construction of green infrastructure that will be located in multiple counties that are all located within the City of New York. In an August 25, 2015, **Federal Register** notice (80 FR 51592), the Department provided the City of New York with an exemption from the covered project requirements for infrastructure projects that would not otherwise meet the definition of a covered project but that were located in multiple counties, recognizing that within the City of New York, the counties are "subordinate to the municipal government." The Department is now providing a waiver of the covered project requirements for the comprehensive green infrastructure assessment and implementation project in continued recognition of the unique subordinate status of counties located within the City of New York.

6. Waiver of Requirements for New Construction Activities for Breezy Point Storm Drainage System (State of New York only). The State of New York has requested a waiver of section 105(a)(4) of the HCDA to the extent necessary to permit new construction of a storm drainage system at Breezy Point, a privately held cooperative in Queens, by classifying the entire system as an improvement for residential purposes rather than as a public improvement under section 105(a)(2) of the HCDA, which would otherwise preclude assisting private homeowners. The State of New York has allocated up to $19.5 million in CDBG–DR dollars to fund long-term initiatives that will protect and enhance the Breezy Point community. The Breezy Point Cooperative is a residential bungalow community consisting of 2,837 homes that are primarily wood frame, single family houses along the Rockaway Peninsula. The storm water drainage improvement project consists of three activities to address three of the most flood-prone areas in Breezy Point. One of the three projects is a storm drain system that would be implemented to collect storm water and pump it out of the area. In its request to the Department, the State contends that not funding this activity will leave residential buildings in Breezy Point, as well as emergency personnel, resources, and infrastructure, exposed to reoccurring flooding events. The State also contends that failure to undertake the improvement would allow for periodic floods to gradually degrade systems, increase the likelihood of catastrophic failures, and place people, development, and resources, at continuing and possibly escalating risk. Therefore, for the State's Breezy Point storm drainage system only, the Department is waiving section 105(a)4 of the HCDA to the extent necessary to allow for the new construction associated with this activity.

7. Waiver of requirements on public facility improvement on private land for the Raised Shorelines Program (New York City only). New York City has requested a waiver of 24 CFR 570.201(c) and 24 CFR 570.202(a)(1) to the extent necessary to permit new construction of shoreline improvements on private property. Under the CDBG Entitlement program regulations at 24 CFR 570.202(a)(1), which are applicable to units of local government, New York City may use CDBG–DR funds to finance the rehabilitation of privately owned buildings and improvements for residential purposes, including grounds improvements that are incidental to and necessary for housing rehabilitation. However, this housing rehabilitation provision does not permit the city to construct new shoreline improvements on privately held land that would minimize the threat and impact of future inland flooding (a public benefit). Additionally, the fact that part of the designated shoreline is privately owned currently precludes the city from funding this activity as an eligible public facility and improvement under the CDBG regulations at 24 CFR 570.201(c). To accomplish the mitigation goals of the resiliency project planned by the city, the physical improvements must be made to a continuous coastline made up of both public and private properties. The Raised Shorelines program will protect vulnerable areas that contain homes and businesses that were directly damaged or negatively impacted by Hurricane Sandy. The city has allocated $109 million in HUD CDBG–DR dollars to fund the Raised Shorelines program and has determined that the construction of continuous shoreline improvements will not only protect against sea level rise in the future, but also help with the recovery effort by restoring damaged shorelines, fortifying vulnerable shorelines against storm events, and raising shorelines to protect the broader lower-lying communities against future flooding. Therefore, for the city's Raised Shorelines program only, the Department is waiving 24 CFR 570.202(a)(1) to the extent necessary to allow for the city's shoreline improvements on private property to be classified as an eligible housing rehabilitation and preservation activity, and to allow for the new construction associated with this activity. Further, the Department is waiving section 105(a)(4) of the HCDA to the extent necessary to allow for the new construction associated with this activity that would otherwise be prohibited.

8. Waiver to Allow the Use of CDBG–DR Funds for Rental Assistance for New Jersey Homeowners in the RREM and LMI Homeowners Programs (State of New Jersey only). In the State of New Jersey, more than 8,000 homeowners are rebuilding their Sandy-damaged homes through the State's Rehabilitation, Reconstruction, Elevation and Mitigation (RREM) Program or the Low- and Moderate-Income (LMI) Homeowners Rebuilding Program (LMI Program). Nearly 3,000 of those homeowners have already completed construction; however, the majority of remaining applicants, many of whom are LMI households, are still in the construction phase due to unanticipated delays and scarcity of available construction and/or elevation contractors in the State. While undergoing rehabilitation of their homes, most of these applicants are forced to pay not only a mortgage payment, but rent as well. In order to provide temporary financial assistance to these families, the State created the Sandy Homeowners and Renters Assistance Program (SHRAP), using $100 million of federal Social Services Block Grant (SSBG) funds, to provide up to $15,000 to homeowners and renters for rental assistance and/or to replace storm-damaged appliances. Once SHRAP funds were exhausted, the State used an additional $19.5 million in SSBG funds to create the Rental Assistance Program (RAP). The RAP program provided rental assistance of up to $1,300 per month for up to 9 months to homeowners with executed RREM or LMI Program grant agreements who are paying rent because they are displaced by storm damage, construction, or elevation. The State estimates that these funds will be exhausted by July 2016; nevertheless, based on their analysis of RAP to date, the State projects that approximately 20–30 percent of RAP recipients will have ongoing rental assistance needs after exhausting their RAP assistance. The majority of those households will be LMI. To address this impending need, the State of New Jersey has requested to use up to $30 million in CDBG–DR funds to continue to provide interim rental assistance for up to 21 months to families rebuilding through RREM or the LMI Program and who are already in or who apply to the RAP program, once SSBG funds are exhausted. Without a waiver, the State could not use CDBG–DR funds for subsistence-type grant payments to individuals or families. Therefore, in order to allow the State of New Jersey to continue its RAP Program, HUD is waiving the requirements at section 105(a)(8) of the HCDA to the extent necessary to allow the State of New Jersey to use up to $30 million of its CDBG–DR allocation to provide up to 21 months of RAP assistance to eligible RREM and LMI program applicants. The State must implement this alternative requirement consistent with the approach outlined in its request and as described herein. This waiver and alternative requirement shall remain in effect until December 31, 2017, after which the State will no longer be able to use CDBG–DR funds for any new applicants to the RAP program.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice is 14.269.

VI. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: August 8, 2016.

Nani A. Coloretti,

Deputy Secretary.

[FR Doc. 2016–19394 Filed 8–12–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5913–N–17]

Withdrawal of 60-Day Notice of Proposed Information Collection: Energy Benchmarking

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Withdrawal: Notice.

SUMMARY: On August 9, 2016 at 81 FR 52703, HUD published a 60 Day Notice of Proposed Information Collection entitled "Energy Benchmarking." HUD is withdrawing this notice from the **Federal Register** and will publish again at a later date.

FOR FURTHER INFORMATION CONTACT: Stan Houle, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW., Room 10139, Washington, DC 20410, telephone 202–708–3054. (This is not a toll-free number.) Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Dated: August 9, 2016.

Mark Kudlowitz,

Director, Multifamily Housing Programs.

[FR Doc. 2016–19405 Filed 8–12–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–55]

30-Day Notice of Proposed Information Collection: Single Family Premium Collection Subsystem-Upfront (SFPCS–U)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: September 14, 2016.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 14, 2016 at 81 FR 22102.

A. Overview of Information Collection

Title of Information Collection: Single Family Premium Collection Subsystem-Upfront (SFPCS–U).

OMB Approval Number: 2502–0423.

Type of Request: Revision of currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: To continue to collect MIP information and improve customer service and FHA lender portfolio management capabilities.

Respondents: Business or other for profit.

Estimated Number of Respondents: 2,711.

Estimated Number of Responses: 7,534.

Frequency of Response: 12 hour.

Average Hours per Response: .15 hours.

Total Estimated Burdens: 4,880 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 9, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–19393 Filed 8–12–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2016–N104]; FXES11130600000–167–FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to

comment on the following applications for a permit to conduct activities intended to enhance the survival of endangered species. Federal law prohibits certain activities with endangered species unless a permit is obtained.

DATES: To ensure consideration, please send your written comments by September 14, 2016.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. You may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (*e.g.,* Permit No. TE–XXXXXX).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (*e.g.,* Permit No. TE–XXXXXX) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- *In-Person Drop-off, Viewing, or Pickup:* Call (719) 628–2670 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Recovery Permits Coordinator, Ecological Services, (719) 628–2670 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The Act and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittees to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following applications. Documents and other information the applicants have submitted with their applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number TE051828

Applicant: Smithsonian National Zoo Conservation and Research Center, Front Royal, VA.

The applicant requests a renewed permit to continue with the propagation of black-footed ferrets (*Mustela nigripes*) in assistance of the U.S. Fish and Wildlife Service's captive breeding program for the purpose of enhancing the species' survival.

Permit Application Number TE047808

Applicant: National Park Service, Moab, UT.

The applicant requests a renewal for an existing permit to continue presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) in Utah for the purpose of enhancing the species' survival.

Permit Application Number TE053961

Applicant: Omaha's Henry Doorly Zoo & Aquarium, Omaha, NE.

The applicant requests a renewal to propagate and rear Salt Creek tiger beetle (*Cicindela nevadica lincolniana*) for reintroduction purposes to enhance the species' survival.

Permit Application Number TE049109

Applicant: Red Butte Garden and Arboretum, Salt Lake City, UT.

The applicant requests a renewal for genetic research and to collect vouchers, propagate, and collect seeds for banking for autumn buttercup (*Ranunculus acriformis aestivalis*), Barneby reed-mustard (*Schoenocrambe branebyi*), Barneby ridge-cress (*Lepidium barnebyanum*), clay phacelia (*Phacelia argillacea*), Holmgren milk-vetch (*Astrabalus holmgreniorum*), Kodachrome bladderpod (*Lesquerella tumulosa*), San Rafael cactus (*Pediocactus despainii*), Shivwitz milk-vetch (*Astragalus ampullarioides*), shrubby reed-mustard (*Schoenocrambe suffrutenscens*), and Wright fishhook cactus (*Sclerocactus wrightiae*) for the purpose of enhancing the species' survival.

National Environmental Policy Act

The proposed activities in the requested permits qualify as categorical exclusions under the National Environmental Policy Act, as provided by Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215).

Public Availability of Comments

All comments and materials we receive in response to these requests will be available for public inspection, by appointment, during normal business hours at the address listed above in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2016–19351 Filed 8–12–16; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2016–N136; FXES11130800000–167–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before September 14, 2016.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicants

Permit No. TE–210235

Applicant: Matthew McDonald, Idyllwild, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–20186A

Applicant: Garrett Huffman, Black Canyon City, Arizona

The applicant requests a permit amendment to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–166393

Applicant: Peter C. Trenham, State College, Pennsylvania

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, apply egg laying substrates, and conduct training workshops) the California tiger salamander ((central distinct population segment (DPS), Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)) in conjunction with survey, research, and training activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–99057B

Applicant: Steve R. Howard, Ventura, California

The applicant requests a new permit to take (harass by survey, capture, handle, and release) the arroyo toad (arroyo southwestern) (*Anaxyrus californicus*), tidewater goby (*Eucyclogobius newberryi*), and unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–01769B

Applicant: Jesse L. Reebs, Albany, California

The applicant requests a permit amendment to take (harass by survey using taped vocalization callback, and locate and monitor nests) the California Ridgway's rail (California clapper r.) (*Rallus obsoletus obsoletus*) (*R. longirostris o.*) in conjunction with survey activities within the San Francisco Bay area of California for the purpose of enhancing the species' survival.

Permit No. TE–60147A

Applicant: Heather Moine, Goleta, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–50510A

Applicant: Geoffrey D. Cline, Truckee, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander ((central distinct population segment (DPS), Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)), Fresno kangaroo rat (*Dipodomys nitratoides exilis*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), and giant kangaroo rat (*Dipodomys ingens*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–56889A

Applicant: Melissa Odell, Mariposa, California

The applicant requests a permit amendment to take (harass by survey, capture, handle, and release in aquatic habitats) the California tiger salamander ((central distinct population segment (DPS), Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–068072

Applicant: Philippe J. Vergne, Boulder, Montana

The applicant requests a permit renewal to take (harass by survey, capture, handle, insert passive integrated transponder (PIT) tags, and release) the San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*), Stephens' kangaroo rat (*Dipodomys stephensi*), and Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–012973

Applicant: ECORP Consulting Inc., Rocklin, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, translocate resting eggs, release, collect vouchers, analyze soil samples, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); and take (harass by survey, capture, handle, and release) the California tiger salamander ((central distinct population segment (DPS), Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)), giant kangaroo rat (*Dipodomys ingens*), and salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–126141

Applicant: Craig Stockwell, Fargo, North Dakota

The applicant requests a permit renewal to take (capture, mark, fin clip, measure, release, and collect for research purposes) the Pahrump poolfish (*Empetrichthys latos*) in conjunction with survey, research, and genetic analysis activities in Nevada for the purpose of enhancing the species' survival.

Permit No. TE–00137C

Applicant: Michael Davis, Bozeman, Montana

The applicant requests a new permit to take (capture, mark, and release) the Mohave tui chub (*Gila bicolor mohavensis*) in conjunction with survey and population monitoring activities on Naval Air Weapons Station China Lake, China Lake, California, for the purpose of enhancing the species' survival.

Permit No. TE–823990

Applicant: Wildwing, Los Osos, California

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests, handle/mark eggs, capture, band, erect exclosures, and release) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with survey and population monitoring activities throughout the range of the species in California and Oregon for the purpose of enhancing the species' survival.

Permit No. TE–76732A

Applicant: Jennifer L. Kendrick, Encinitas, California

The applicant requests a permit renewal and amendment to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–72275B

Applicant: Meghan Bishop, Moraga, California

The applicant requests a permit amendment to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–02399C

Applicant: Harry Sandoval, Chino, California

The applicant requests a permit to take (harass by survey, capture, handle, ear tag, collect genetic sample, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–02399C

Applicant: Jeff Gurule, North Fork, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–02399C

Applicant: Davinna Ohlson, San Jose, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–213308

Applicant: Joseph DiDonato, Alameda, California

The applicant requests a permit amendment to take (harass by survey, capture, handle, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–006112

Applicant: Gretchen Padgett-Flohr

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); take (harass by survey, capture, handle, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*); and take (harass by survey, capture, handle, swab, tail clip, and release) the California tiger salamander ((central distinct population segment (DPS), Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)) in conjunction with survey and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Angela Picco,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2016–19290 Filed 8–12–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[167D0102DM/DS61200000/ DLSN00000.000000/DX61201]

U.S. Coral Reef Task Force Public Meeting and Public Comment

AGENCY: Office of Policy and International Affairs, Department of the Interior .

ACTION: Notice of public meeting; request for public comment.

SUMMARY: We, the U.S. Department of the Interior, announce a public meeting of the U.S. Coral Reef Task Force and a request for written comments. This meeting, the 36th biannual meeting of the task force, provides a forum for coordinated planning and action among Federal agencies, State and territorial governments, and nongovernmental partners.

DATES: *Meeting Dates:* September 22nd and September 23rd, 2016. *Advance Public Comments:* Submit by September 9th, 2016.

ADDRESSES: Meetings will be held at the Fiesta Resort and Spa Saipan, Coral Tree Ave, Garapan, Saipan 96950, CNMI on September 22nd and at the Hyatt Regency Guam, 1155 Pale San Vitores Road, Tumon, Guam, Micronesia, 96913 on September 23rd.

FOR FURTHER INFORMATION CONTACT: Cheryl Fossani, DOI, U.S. Coral Reef Task Force Steering Committee Executive Secretary, U.S. Department of the Interior, MS–3530–MIB, 1849 C Street NW., Washington, DC 20240 (phone: 202–208–5004; fax: 202–208–4867; email: *cheryl_fossani@ios.doi.gov*); or visit the USCRTF Web site at *www.coralreef.gov.*

SUPPLEMENTARY INFORMATION: Established by Presidential Executive Order 13089 in 1998, the U.S. Coral Reef Task Force has a mission to lead, coordinate, and strengthen U.S. government actions to better preserve and protect coral reef ecosystems. The Departments of Commerce and the Interior co-chair the task force, whose members include leaders of 12 Federal agencies, 2 U.S. States, 5 U.S. territories, and 3 freely associated States. For more information about the meetings, draft agendas, and how to register, go to *www.coralreef.gov.* A written summary of the meeting will be posted on the Web site after the meeting.

Registration To Attend the Meeting

Attendees can register online before the start of the meeting, or on site at the registration desk. Registration details will be announced on the task force Web site at *www.coralreef.gov.*

Public Comments

Comments may address the meeting, the role of the USCRTF, or general coral reef conservation issues. Copies of comments given at the meeting can be submitted afterwards in writing to Cheryl Fossani by email, fax, or mail (see **FOR FURTHER INFORMATION CONTACT**) by September 9th, 2016.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 1, 2016.

Liza M. Johnson,

Ocean, Coasts, and Great Lakes Coordinator, U.S. Department of the Interior.

[FR Doc. 2016–19202 Filed 8–12–16; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. ONRR–2012–0003; DS63642000 DR2PS0000.CH7000 167D0102R2]

U.S. Extractive Industries Transparency Initiative Advisory Committee Charter Renewal

AGENCY: Policy, Management and Budget, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior is giving notice of the renewal of the United States Extractive Industries Transparency Initiative (USEITI) Federal Advisory Committee (Committee) to advise the Department on the implementation of the Extractive Industries Transparency Initiative, which requires governments to publicly disclose their revenues from oil, gas, and mining assets and for companies to make parallel disclosures regarding payments.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Oliver, USEITI Secretariat; 1849 C Street NW., MS–4211, Washington, DC 20240. You may also contact the USEITI Secretariat via email at *useiti@ios.doi.gov,* by phone at (202) 208–0272, or by fax at (202) 513–0682.

SUPPLEMENTARY INFORMATION: The U.S. Department of the Interior established the USEITI Advisory Committee on July 26, 2012. The Committee serves as the Multi-Stakeholder Group and its duties include consideration and fulfillment of the tasks required to achieve and maintain EITI-compliant status. More information about the Committee, including its charter, can be found at *www.doi.gov/eiti/faca.*

CERTIFICATION

CERTIFICATION STATEMENT: I hereby certify that the U.S. Extractive Industries Transparency Initiative Advisory Committee is necessary, is in the public interest, and is established under the authority of the Secretary of the Interior, in support of the Open Government Partnership and the commitment in the United States' National Action Plan to implement the Extractive Industries Transparency Initiative.

Dated: August 3, 2016.

Sally Jewell,

Secretary of the Interior.

[FR Doc. 2016–19298 Filed 8–12–16; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0106]

Information Collection: Oil Spill Financial Responsibility for Offshore Facilities; Proposed Collection for OMB Review; Comment Request MMAA104000

ACTION: 60-Day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Ocean Energy Management (BOEM) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements for 30 CFR 553, *Oil Spill Financial Responsibility for Offshore Facilities,* as well as the associated forms. The Office of Management and Budget (OMB) has assigned control number 1010–0106 to this information collection.

DATES: Submit written comments by October 14, 2016.

ADDRESSES: Please send your comments on this ICR to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166 (mail); or *anna.atkinson@boem*.gov; or 703–787–1209 (fax). Please reference OMB Control Number 1010–0106 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Anna Atkinson, Office of Policy, Regulations, and Analysis at 703–787–1025 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION: The following information pertains to this request:

OMB Control Number: 1010–0106.

Title: 30 CFR 553, *Oil Spill Financial Responsibility for Offshore Facilities.*

Forms:

- BOEM–1016, Designated Applicant Information Collection;
- BOEM–1017, Appointment of Designated Applicant;
- BOEM–1018, Self-Insurance Information;
- BOEM–1019, Insurance Certificate;
- BOEM–1020, Surety Bond;
- BOEM–1021, Covered Offshore Facilities;
- BOEM–1022, Covered Offshore Facility Changes;
- BOEM–1023, Financial Guarantee; and
- BOEM–1025, Independent Designated Applicant Information Certification.

Abstract: This information collection request addresses the regulations at 30 CFR 553, *Oil Spill Financial Responsibility* (OSFR) for Offshore Facilities, including any supplementary notices to lessees and operators that provide clarification, description, or explanation of these regulations, and forms BOEM–1016 through 1023 and BOEM–1025.

BOEM uses the information collected under 30 CFR 553 to verify compliance with section 1016 of the Oil Pollution Act, as amended. The information is necessary to confirm that applicants can pay for cleanup and damages resulting from oil spills and other hydrocarbon discharges that originate from Covered Offshore Facilities.

The BOEM uses forms to collect some information to ensure proper and efficient administration of Oil Spill Financial Responsibility. BOEM collects information to:

1. Provide a standard method for establishing eligibility for oil spill financial responsibility (OSFR) for offshore facilities;
2. Identify and maintain a record of those offshore facilities that have a potential oil spill liability;
3. Establish and maintain a continuous record, over the liability term specified in Title I of the Oil Pollution Act of 1990, of financial evidence and instruments established to pay claims for oil spill cleanup and damages resulting from operations conducted on offshore facilities and the transportation of oil from offshore platforms and wells;
4. Establish and maintain a continuous record of Responsible Parties, as defined in Title I of the Oil Pollution Act of 1990, and their agents or Authorized Representatives for oil spill financial responsibility for offshore facilities; and
5. Establish and maintain a continuous record, over the liability term specified in Title I of the Oil Pollution Act of 1990, of persons to contact and U.S. Agents for Service of Process for claims associated with oil spills from offshore facilities.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR part 2) and under regulations at 30 CFR 550.197, ‘‘Data and information to be made available to the public or for limited inspection.’’ No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion or annual.

Description of Respondents: Holders of leases, permits, and rights of use and easement in the Outer Continental Shelf and in State coastal waters who will appoint designated applicants. Other respondents will be the designated applicants' insurance agents and brokers, bonding companies, and guarantors. Some respondents may also be claimants.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this collection is 22,132 hours. The following table details the individual components and respective hour burden estimates of this ICR.

Citation 30 CFR 553	Reporting requirement *	Hour burden	Average number of annual reponses	Annual burden hours
Various sections.	The burdens for all references to submitting evidence of OSFR, as well as required or supporting information, are covered with the forms below.			0
	Applicability and Amount of OSFR			
11(a)(1); 40; 41	Form BOEM–1016—Designated Applicant Information Certification	1	200	200
11(a)(1); 40; 41	Form BOEM–1017—Appointment of Designated Applicant	9	600	5,400
11(a)(2)	Form BOEM–1025—Independent Designated Applicant Information Certification.	1	200	200
12	Request for determination of OSFR applicability. Provide required and supporting information.	2	5	10
15	Notify BOEM of change in ability to comply	1	1	1
15(f)	Provide claimant written explanation of denial	1	15	15
Subtotal			1,021	5,826
	Methods for Demonstrating OSFR			
21; 22; 23; 24; 26; 27; 30; 40; 41; 43.	Form BOEM–1018—Self-Insurance Information, including renewals	1	50	50
	Form BOEM–1023—Financial Guarantee	1.5	25	38
29; 40; 41; 43	Form BOEM–1019—Insurance Certificate	120	120	14,400
31; 40; 41; 43	Form BOEM–1020—Surety Bond	24	4	96
32	Proposal and supporting information for alternative method to evidence OSFR (anticipate no proposals, but regulations provide the opportunity).	120	1	120

Citation 30 CFR 553	Reporting requirement*	Hour burden	Average number of annual reponses	Annual burden hours
Subtotal			200	14,704
Requirements for Submitting OSFR Information				
40; 41; 43	Form BOEM–1021—Covered Offshore Facilities	6	200	1,200
40; 41; 42	Form BOEM–1022—Covered Offshore Facility Changes	1	400	400
Subtotal			600	1,600
Claims for Oil-Spill Removal Costs and Damages				
Subpart F	Claims: BOEM is not involved in the claims process. Assessment of burden for claims against the Oil Spill Liability Trust Fund (30 CFR parts 135, 136, 137) falls under the responsibility of the U.S. Coast Guard.			0
60(d)	Claimant request for BOEM assistance to determine whether a guarantor may be liable for a claim.	2	1	2
Subtotal			1	2
Total Burden			1,822	22,132

* In the future, BOEM may require specified electronic filing of financial/bonding submissions.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no reporting and recordkeeping non-hour cost burdens for this collection.

Public Disclosure Statement: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d) and 1320.12(a)). This notice identifies an information collection that the BOEM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: The BOEM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

Agencies must also estimate the non-hour cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup costs or annual cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (a) Before October 1, 1995; (b) to comply with requirements not associated with the information collection; (c) for reasons other than to provide information or keep records for the Government; or (d) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 8, 2016.

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2016–19310 Filed 8–12–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed First Partial Remedial Design/Remedial Action (RD/RA) Consent Decree Under CERCLA

On August 9, 2016, the Department of Justice lodged a proposed First Partial Remedial Design/Remedial Action (RD/RA) Consent Decree ("Consent Decree") with the United States District Court for the District of New Mexico, in the lawsuit entitled *United States and State of New Mexico, et al.* v. *Chevron Mining Inc.,* Civil Action No. 1:16–cv–00904.

The United States, on behalf of the U.S. Environmental Protection Agency, together with the State of New Mexico, filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") against Chevron Mining Inc. ("CMI"). The Defendant, CMI, is the owner and operator of the Chevron Questa Mine Superfund Site ("Site"), an inactive

Molybdenum mine, located in Taos County, New Mexico. The complaint requests recovery of costs that the United States incurred responding to releases of hazardous substances at the Site. Under the proposed settlement, CMI agrees to pay $5,269,949 in past costs, to perform certain aspects of the remedial action selected by EPA for the Site, which are estimated to cost over $143 million, and to pay EPA's future costs associated with oversight of that work. Other aspects of the remedy will proceed at a later date. In return, the United States agrees not to sue CMI under sections 106 and 107 of CERCLA or under section 7003 of the Resource Conservation and Recovery Act for the work that CMI has agreed to perform.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Mexico, et al.* v. *Chevron Mining Inc.,* Civil Action No. 1:16–cv–00904, D.J. Ref. No. 90–11–3–10261. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $36.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $11.50.

Jeffrey K. Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–19335 Filed 8–12–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Workforce Information Grants to States (WIGS)

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, "Workforce Information Grants to States (WIGS)." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

DATES: Consideration will be given to all written comments received by October 14, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Donald Haughton by telephone at 202–693–2784, TTY 877–889–5627, (these are not toll-free numbers) or by email at *Haughton.Donald.W@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Avenue NW., Room C–4510, Washington, DC 20210; by email: *Haughton.Donald.W@dol.gov;* or by Fax 202–693–3015.

FOR FURTHER INFORMATION CONTACT: Contact Donald Haughton by telephone at 202–693–2784 (this is not a toll-free number) or by email at *Haughton.Donald.W@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This collection of information is necessary to comply with the reporting requirements of the Workforce Innovation and Opportunity Act (WIOA) Section 308 (29 U.S.C. 491–2), which can be found at *https://www.gpo.gov/fdsys/pkg/PLAW-113publ128/pdf/PLAW-113publ128.pdf;* and 20 Code of Federal Regulations (CFR) Parts 651 and 652 (*https://www.doleta.gov/wioa/Docs/wioa-regs-labor-final-rule.pdf*).

WIOA Section 308 requires the Secretary of Labor to oversee the development, maintenance, and continuous improvement of a nationwide Workforce and Labor Market Information System (workforce information) system; and to evaluate the performance of the system and recommend needed improvements, taking into consideration customer consultation results, with particular attention given to improvements needed at the state, regional and local levels. The WIGS information collection ensures the Secretary of Labor meets WIOA requirements, and the states complete grant deliverables such as state economic analyses or special workforce information/economic studies, and the annual performance report.

The ETA makes use of the information collected from WIGS grantees primarily to serve four customer groups: (1) The public (including job seekers and employers); (2) labor market intermediaries who help individuals find a job or make career decisions (such as employment and school counselors, case managers at American Job Centers, and community-based organizations); (3) policymakers and employment and economic program planners and operators; and (4) miscellaneous other customers, including researchers, commercial data providers, and the news media.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB

Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention Workforce Information Grants to States (WIGS), OMB control number 1205–0417.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Workforce Information Grants to States (WIGS).

Form: N/A.

OMB Control Number: 1205–0417.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 54.

Frequency: Once.

Total Estimated Annual Responses: 162

Estimated Average Time per Response: 578 hours.

Estimated Total Annual Burden Hours: 31,228 hours.

Total Estimated Annual Other Cost Burden: $1,020,218.

Portia Wu,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2016–19399 Filed 8–12–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cleanup Program for Accumulations of Coal and Float Coal Dusts, Loose Coal, and Other Combustibles

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Cleanup Program for Accumulations of Coal and Float Coal Dusts, Loose Coal, and Other Combustibles," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 14, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1219-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Cleanup Program for Accumulations of Coal and Float Coal Dusts, Loose Coal, and Other Combustibles information collection requirements codified in regulations 30 CFR 75.400–2 that requires a mine operator to establish and to maintain a program for the regular cleanup and removal of accumulations of coal and float coal dusts, loose coal, and other combustibles. A mine operator must have a written cleanup program that is maintained in the underground mine file at the appropriate MSHA District Office for each mine. This cleanup program is used as a tool to help abate significant or persistent problems by including cleanup program revisions to address hazards detected in the mine. Federal Mine Safety and Health Act of 1977 sections 101(a) and 103(h) authorize this information collection. *See* 30 U.S.C. 811(a) and U.S.C. 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0151.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on September 30, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 18, 2016 (81 FR 14894).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0151. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Cleanup Program for Accumulations of Coal and Float Coal Dusts, Loose Coal, and Other Combustibles.

OMB Control Number: 1219–0151.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 290.

Total Estimated Number of Responses: 290.

Total Estimated Annual Time Burden: 422 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: August 9, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–19398 Filed 8–12–16; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Veterans' Employment and Training Service Competitive Grant Programs Reporting

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Veterans' Employment and Training (VETS) sponsored information collection request (ICR) proposal titled, "Veterans' Employment and Training Service Competitive Grant Programs Reporting," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 14, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201511-1293-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–VETS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the Veterans' Employment and Training Service Competitive Grant Programs Reporting information collection. This collection of information is necessary for the proper oversight of discretionary grant funds administered by the VETS, as required by law and regulation. VETS discretionary grants fund approximately 150 homeless veterans' reintegration projects to serve roughly 17,000 homeless veterans and incarcerated veterans at-risk of homelessness annually. The discretionary grant funds are also used to fund approximately 66 Stand Down events annually. The Homeless Veterans Reintegration Program and the Homeless Women Veterans and Homeless Veterans with Children Reintegration grant programs authorize this information collection. *See* 38 U.S.C. 2021(b) and 32 U.S.C. 2021A(c).

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on January 8, 2016 (81 FR 970).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201511–1293–001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–VETS.

Title of Collection: Veterans' Employment and Training Service Competitive Grant Programs Reporting.

OMB ICR Reference Number: 201511–1293–001.

Affected Public: State, Local, and Tribal Governments; Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 882.

Total Estimated Number of Responses: 2,850.

Total Estimated Annual Time Burden: 5,540 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: August 8, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–19401 Filed 8–12–16; 8:45 am]

BILLING CODE 4510–79–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030–38874 and 030–38780; EA–13–190; NRC–2016–0170]

In the Matter of Plus, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Imposition order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Imposition Order to Plus, LLC, imposing a civil penalty of $21,000. On May 3, 2016, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty—$42,000 to Plus, LLC, for failing to comply with regulatory requirements regarding the import, possession, and distribution of watches containing byproduct material (hydrogen-3).

DATES: The Imposition Order was issued on August 8, 2016

ADDRESSES: Please refer to Docket ID NRC–2016–0170 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0170. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For questions about this Imposition Order, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Leelavathi Sreenivas, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1285, email: *Leelavathi.Sreenivas@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Imposition Order is attached.

Dated at Rockville, Maryland, this 8th day of August, 2016.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Office of Enforcement.

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

In the Matter of Plus, LLC; Stamford, Connecticut
Docket Nos. 030–38874 and 030–38780
License Nos. 06–35274–01E and 06–35183–01
EA–13–190

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Plus, LLC (Plus or the Licensee), is the holder of Materials License No.06–35183–01 issued by the U.S. Nuclear Regulatory Commission (NRC) on April 23, 2015, pursuant to Part 30 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes the licensee to possess material at its facility located in Stamford, Connecticut, in accordance with the conditions specified therein. Under 10 CFR 110.27, the Licensee is granted a general license to import in accordance with the conditions specified in the regulations. The Licensee is also the holder of Materials License No. 06–35274–01E issued by the NRC on December 2, 2015. The license authorizes the Licensee to distribute material in accordance with the conditions specified therein. At the time of the initiation of the violations, Plus, LLC, did not have any specific licenses issued by the NRC or an Agreement State for activities involving the import, possession, or distribution of byproduct material.

II

Two investigations were initiated by the NRC Office of Investigations (OI), on October 18, 2013, and April 8, 2015. The results of these investigations indicated that Plus was conducting activities that were not in compliance with the NRC's requirements, specifically, without the required licensing for such activities. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon Plus by letter dated May 3, 2016 (ADAMS Accession No. ML16071A111). The Notice states the nature of the violations, the provisions of the NRC's requirements that Plus violated, and the amount of the civil penalty proposed for the violations.

Plus responded to the Notice in a letter dated May 10, 2016 (ADAMS Accession No. ML16215A481). In its response, the Licensee did not deny the facts involving the violations, but did request mitigation of the severity level of the violations and the proposed civil penalty amount.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order that these violations occurred, as stated, and that adequate basis does not exist for mitigation of the severity level. The NRC also determined that an adequate basis was provided by the Licensee for mitigation of the proposed civil penalty amount. Consequently, based on the small entity status of the Licensee, a reduced civil penalty in the amount of $21,000 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee shall pay a civil penalty in the amount of $21,000 within 30 days of the issuance date of this Order, in accordance with NUREG/BR–0254, "Payment Methods" (*see http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0254/*). In addition, at the time payment is made, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

In accordance with 10 CFR 2.205(d), the Licensee and any other person adversely affected by this Order may request a hearing on this Order within 30 days of the issuance date of this Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139, August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission to the NRC," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call to 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than Plus, LLC, requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for a hearing or alternative dispute resolution (ADR), or written approval of an extension of time in which to request a hearing or ADR, the provisions specified in Section IV above shall be final 30 days from the issuance date of this Order without further order or proceedings. If an extension of time for requesting a hearing or ADR has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing or ADR request has not been received. If ADR is requested, the provisions specified in Section IV shall be final upon termination of an ADR process that did not result in issuance of an order.

Dated at Rockville, Maryland, this 8th day of August, 2016.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Office of Enforcement.

Appendix to Imposition Order

Evaluations and Conclusion of Licensee Request for Mitigation

On May 3, 2016, the U.S. Nuclear Regulatory Commission (NRC) issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) for violations identified during the NRC investigations and records review. Plus, LLC (Licensee), responded to the Notice on May 10, 2016.

The Licensee did not deny the facts involving the violations, however, the Licensee did request mitigation of the severity level of the violations and the proposed civil penalty amount. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

1. *Summary of Licensee's Request to Mitigate Severity Level:*

The Licensee stated that there was no actual "moderate safety or security consequences" because there was no contamination found at the Licensee facility in an inspection conducted by the NRC on February 10, 2016, and that the products were the same as those that the NRC subsequently licensed for distribution by the Licensee.

NRC Evaluation of Licensee's Response to Violations

The NRC considers these violations significant because the requirements in § 30.3(a) of Title 10 of the *Code of Federal Regulations* (CFR) provide reasonable assurance that transfers and the products intended for use by unlicensed persons meet the applicable requirements. The failure to obtain appropriate license authorization to distribute these products is significant because it resulted in the NRC not being able to conduct its regulatory responsibilities to ensure that the products were safe for distribution to members of the general public. The fact that there was no actual contamination found, and that the NRC was subsequently able to approve the Licensee's application for possession and distribution licenses, is fortuitous, but does not decrease the importance of the regulatory requirement and NRC oversight. Also, the NRC considers the Licensee's actions regarding all three of the violations to be willful and because the NRC's regulatory programs rely upon the integrity of entities, applicants, and licensees to comply with NRC requirements, the willful violations are of significant concern to the NRC. Therefore, in accordance with the Enforcement Policy (ADAMS Accession No. ML16197A561), these violations are appropriately characterized as Severity Level III violations. Accordingly, the significance of these violations have been determined to remain valid as stated in the Notice.

2. *Summary of Licensee's Request for Mitigation of Civil Penalty Amount*

The Licensee stated that Plus, LLC, should be considered a small entity and that if considered a small entity then the amount of annual license fees that Plus, LLC, avoided over the duration of the violations is less than the $70,000 estimated by the NRC. The Licensee requested that the NRC reconsider the civil penalty amount proposed.

NRC Evaluation of Licensee's Request for Mitigation of Civil Penalty Amount

The NRC confirmed that, on or about March 22, 2016, Plus, LLC, requested small entity classification by submitting an NRC Form 526—Certification of Small Entity Status for the Purposes of Annual Fees Imposed under 10 CFR part 171, along with the Licensee's first annual fee invoice. The request was accepted by the NRC and therefore, Plus, LLC, is considered to be a small entity entitled to reduced fees under 10 CFR 171.16. Accordingly, the NRC recalculated the annual fees avoided assuming small entity status and determined that the amount of annual license fees that Plus, LLC, avoided was approximately $11,200. Therefore, the NRC has concluded that it will not escalate the base civil penalty, and will reduce the proposed civil penalty to $21,000 as determined by application of the NRC Enforcement policy.

Conclusion:

Based on its evaluation, the NRC has concluded that these violations occurred as stated, and that adequate basis does not exist for mitigation of the severity level of these violations. The NRC also concluded that the Licensee provided an adequate basis for mitigation of the proposed civil penalty amount. Consequently, a reduced civil penalty in the amount of $21,000 will be imposed.

[FR Doc. 2016–19359 Filed 8–12–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348, 50–364, 50–424, and 50–425; NRC–2016–0169]

Southern Nuclear Operating Company; Farley Nuclear Plant, Units 1 and 2, and Vogtle Electric Generating Plant, Units 1 and 2; Use of Optimized ZIRLO™ Fuel Rod Cladding Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a March 16, 2016, request from Southern Nuclear Operating Company (SNC or the licensee) in order to use Optimized ZIRLO™ fuel rod cladding material at the Farley Nuclear Plant (FNP), Units 1 and 2, and the Vogtle Electric Generating Plant (VEGP), Units 1 and 2.

DATES: The exemption was issued on August 4, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0169 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0169. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Robert Martin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1493, email: *Robert.Martin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Southern Nuclear Operating Company is the holder of Renewed Facility Operating License Nos. NPF–2, NPF–8, NPF–68, and NPF–81, which authorize operation of FNP, Units 1 and 2, and VEGP, Units 1 and 2, respectively. The licenses provide, among other things, that each facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

The FNP and VEGP units are pressurized-water reactors located in Houston County, Alabama, and Burke County, Georgia, respectively.

II. Request/Action

Pursuant to § 50.12 title 10 of the *Code of Federal Regulations* (10 CFR), "Specific exemptions," the licensee has requested by letter dated March 16, 2016 (ADAMS Accession No. ML16076A217), an exemption from 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems [ECCS] for light-water nuclear power reactors," and 10 CFR part 50, appendix K, "ECCS Evaluation Models," to allow the use of fuel rods clad with Optimized ZIRLO™. The regulations in 10 CFR 50.46(a) require that the calculated cooling performance following postulated loss-of-coolant accidents (LOCAs) at reactors fueled with zircaloy or ZIRLO® cladding conforms to the criteria set forth in 10 CFR 50.46(b). In addition, 10 CFR part 50, appendix K, requires, in part, that the Baker-Just equation be used to predict the rates of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction. The Baker-Just equation assumes the use of zircaloy materials that have different chemical compositions from Optimized ZIRLO™. As written, these regulations presume only the use of zircaloy or ZIRLO® fuel rod cladding and do not contain provisions for use of fuel rods with other cladding materials. Therefore, an exemption from the requirements of 10 CFR 50.46 and 10 CFR part 50, appendix K, is needed to support the use of a different fuel rod cladding material. Accordingly, the licensee requested an exemption to allow the use of Optimized ZIRLO™ fuel rod cladding at FNP and VEGP.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security. However, 10 CFR 50.12(a)(2) states that the Commission will not consider granting an exemption unless special circumstances are present as set forth in 10 CFR 50.12(a)(2). Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve, or is not necessary to achieve, the underlying purpose of the rule.

A. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and 10 CFR part 50, appendix K, is to establish acceptance criteria for ECCS performance to provide reassurance of safety in the event of a LOCA. Although the wording of the regulations in 10 CFR 50.46 and 10 CFR part 50, appendix K, is not expressly applicable to Optimized ZIRLO™, the evaluations described in the following sections of this exemption show that the purpose of the regulations is met by this exemption in that subject to certain conditions, the acceptance criteria are valid for Optimized ZIRLO™ fuel cladding material, Optimized ZIRLO™ would maintain better post-quench ductility, and the Baker-Just equation conservatively bounds LOCA scenario metal-water reaction rates and is applicable to Optimized ZIRLO™. Because the underlying purposes of 10 CFR 50.46 and 10 CFR part 50, appendix K, can be achieved through the application of these requirements to the use of Optimized ZIRLO™ fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption exist.

B. Authorized by Law

This exemption would allow the use of fuel rods clad with Optimized ZIRLO™ in future core reload applications for FNP and VEGP. The regulations in 10 CFR 50.12 allow the NRC to grant exemptions from the requirements of 10 CFR part 50 provided that the exemptions are authorized by law. The NRC staff determined that special circumstances exist to grant the proposed exemption and that granting the exemption would not result in a violation of the Atomic Energy Act of 1954, as amended. Therefore, the exemption is authorized by law.

C. No Undue Risk to Public Health and Safety

The provisions of 10 CFR 50.46 establish acceptance criteria for ECCS performance. Westinghouse Electric Company, LLC (Westinghouse), Topical Report "WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, "Optimized ZIRLO™," " dated July 2006, contain the justification to use Optimized ZIRLO™ fuel rod cladding material, in addition to Zircaloy-4 and ZIRLO®. The complete topical report is not publicly available because it contains proprietary information; however, a redacted version and the NRC safety evaluation are available in ADAMS under Accession No. ML062080569. The NRC staff found that the Westinghouse topical report demonstrates the applicability of the ECCS acceptance criteria to Optimized ZIRLO™, subject to the compliance with the specific conditions of approval established therein. The NRC staff reviewed the March 16, 2016, application against these specific conditions and concluded that the licensee is in compliance with all of the applicable conditions. The NRC staff's review of these specific conditions for FNP and VEGP can be found in ADAMS under Accession No. ML16179A386.

Ring compression tests performed by Westinghouse on Optimized ZIRLO™ were reviewed and approved by the NRC staff in Topical Report WCAP–14342–A & CENPD–404–NP–A, Addendum 1–A, and demonstrate an acceptable retention of post-quench ductility up to the 10 CFR 50.46 limits of 2,200 degrees Fahrenheit and 17 percent equivalent clad reacted. Furthermore, the NRC staff has concluded that oxidation measurements provided by Westinghouse illustrate that oxide thickness (and associated hydrogen pickup) for Optimized ZIRLO™ at any given burnup would be less than that for both zircaloy and ZIRLO® (ADAMS Package Accession No. ML073130555). Hence, the NRC staff concludes that Optimized ZIRLO™ would be expected to maintain acceptable post-quench ductility.

The provisions of 10 CFR part 50, appendix K, paragraph I.A.5, "Metal-Water Reaction Rate," serve to ensure that cladding oxidation and hydrogen generation are limited appropriately during a LOCA and are conservatively accounted for in the ECCS evaluation model. That regulation requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. Since the use of the Baker-Just equation presumes the use of zircaloy-clad fuel, strict application of the rule would not permit use of the equation for Optimized ZIRLO™ cladding for determining acceptable fuel performance. As concluded in the NRC staff's safety evaluation for the associated topical report, Westinghouse demonstrated that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of the Optimized ZIRLO™ as a fuel cladding material.

The NRC-approved topical report has demonstrated that predicted chemical, thermal, and mechanical characteristics of the Optimized ZIRLO™ alloy cladding are bounded by those approved for ZIRLO® under anticipated operational occurrences and postulated accidents. Reload cores are required to be operated in accordance with the operating limits specified in the technical specifications (TSs) and the core operating limits report.

Based on the above, no new accident precursors are created by using Optimized ZIRLO™; therefore, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety due to using Optimized ZIRLO™.

D. Consistent With Common Defense and Security

The proposed exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material at FNP and VEGP. This change to the plant configuration is adequately controlled by TS requirements and is not related to security issues. Because the common defense and security is not impacted by this exemption, the exemption is consistent with the common defense and security.

E. Environmental Considerations

The NRC staff determined that the exemption discussed herein meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9) because it is related to a requirement concerning the installation or use of a facility component located within the restricted area, as defined in 10 CFR part 20, and issuance of this exemption involves: (i) No significant hazards consideration, (ii) no significant change in the types or a significant increase in the amounts of any effluents that may be released offsite, and (iii) no significant increase in individual or cumulative occupational radiation exposure. Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's consideration of this exemption request. The basis for the NRC staff's determination is discussed as follows, with an evaluation against each of the requirements in 10 CFR 51.22(c)(9)(i)–(iii).

Requirements in 10 CFR 51.22(c)(9)(i)

The NRC staff evaluated whether the exemption involves no significant hazards consideration using the standards described in 10 CFR 50.92(c), as presented below:

1. Does the proposed exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would allow the use of Optimized ZIRLO™ clad nuclear fuel in the reactors. The NRC approved Topical Report WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, "Optimized ZIRLO™," prepared by Westinghouse, addresses Optimized ZIRLO™ and demonstrates that Optimized ZIRLO™ has essentially the same properties as currently licensed ZIRLO®. The fuel cladding itself is not an accident initiator and does not affect accident probability. Use of Optimized ZIRLO™ fuel cladding has been shown to meet all 10 CFR 50.46 acceptance criteria and, therefore, will not increase the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of Optimized ZIRLO™ clad fuel will not result in changes in the operation or configuration of the facility. Topical Report WCAP–12610–P–A & CENPD–404–P–A demonstrate that the material properties of Optimized ZIRLO™ are similar to those of ZIRLO®. Therefore, Optimized ZIRLO™ fuel rod cladding will perform similarly to those fabricated from ZIRLO®, and, therefore, precludes the possibility of the fuel becoming an accident initiator and causing a new or different type of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed exemption involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of Optimized ZIRLO™ are not significantly different from those of ZIRLO®. Optimized ZIRLO™ is expected to perform similarly to ZIRLO® for all normal operating and accident scenarios, including both LOCA and non-LOCA scenarios. For LOCA scenarios, plant-specific evaluations have been performed, which allow the use of fuel assemblies with fuel rods containing Optimized ZIRLO™. These LOCA evaluations address the NRC safety evaluation report conditions and limitations for Optimized ZIRLO™ fuel rod cladding and provide continued compliance with the acceptance criteria of 10 CFR 50.46.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the NRC staff concludes that the proposed exemption involves no significant hazards consideration. Accordingly, the requirements of 10 CFR 51.22(c)(9)(i) are met.

Requirements in 10 CFR 51.22(c)(9)(ii)

The proposed exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material in the reactors. Optimized ZIRLO™ has essentially the same material properties and performance characteristics as the currently licensed ZIRLO® cladding. Therefore, the use of Optimized ZIRLO™ fuel rod cladding material will not significantly change the types of effluents that may be released offsite or significantly increase the amount of effluents that may be released offsite. Therefore, the requirements of 10 CFR 51.22(c)(9)(ii) are met.

Requirements in 10 CFR 51.22(c)(9)(iii)

The proposed exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material in the reactors. Optimized ZIRLO™ has essentially the same material properties and performance characteristics as the currently licensed ZIRLO® cladding. Therefore, the use of Optimized ZIRLO™ fuel rod cladding material will not significantly increase individual occupational radiation exposure or significantly increase cumulative occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(9)(iii) are met.

Conclusion

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's proposed issuance of this exemption.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and that special circumstances are present to warrant issuance of the exemption. Therefore, the Commission hereby grants SNC an exemption from the requirements of 10 CFR 50.46 and 10 CFR part 50, appendix K, paragraph I.A.5, to allow the application of these criteria to, and the use of, Optimized ZIRLO™ fuel rod cladding material at FNP and VEGP.

Dated at Rockville, Maryland, this 4th day of August 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–19363 Filed 8–12–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Export High-Enriched Uranium

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 110.70 (b) "Public Notice of Receipt of an Application," please take notice that the U.S. Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through the Agencywide Documents Access and Management System and can be accessed through the Public Electronic Reading Room link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register** (FR). Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139; August 28, 2007. Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV,* or by calling 301–415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this application for an export license follows.

NRC EXPORT LICENSE APPLICATION

[Description of Material]

Name of applicant Date of application Date received Application No. Docket No.	Material type	Total quantity	End use	Destination
U.S. Department of Energy, National Nuclear Security Administration. July 14, 2016 July 21, 2016 XSNM3776 11006241	High-Enriched Uranium (93.35 WGT %) in the form of broken metal.	6.7 kilograms (kg) uranium-235 contained in 7.2 kg uranium.	For target fabrication at AREVA NP Romans in France, to be used for medical isotope production at the Institute for Radioelements in Belgium.	Belgium.

Dated this 8th day of August 2016 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Mugeh Afshar-Tous,

Acting Director, Office of International Programs.

[FR Doc. 2016–19360 Filed 8–12–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78517; File No. SR–BatsBZX–2016–44]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of the Exchange's Options Platform

August 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to the Exchange's options platform ("BZX Options") to: (i) Increase the fee for orders that yield fee code NP, which is appended Non-Customer[6] orders in Non-Penny Pilot Securities;[7] (ii) add three new tiers under new footnote 13 entitled, "Non-Customer Non-Penny Pilot Take Volume Tier"; (iii) eliminate Tier 4 from footnote 5, Quoting Incentive Program ("QIP") Tier; and (iv) modify the billing policy for the logical port fees.

Fee Code NP

Fee code NP is appended to Non-Customer orders that remove liquidity in Non-Penny Pilot Securities on the Exchange. Orders that yield fee code NP currently incur a fee of $0.99 per contract. The Exchange is proposing to increase this fee to $1.07 per contract, which as explained below, is commensurate with industry standards.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] As defined in the Exchange's fee schedule *available at http://www.batsoptions.com/support/fee_schedule/bzx/.*

[7] *Id.*

In conjunction with this change, the Exchange also proposes to update the Standard Rate table.

Non-Customer Non-Penny Pilot Take Volume Tier

The Exchange proposes to add three tiers under new footnote 13 entitled, "Non-Customer Non-Penny Pilot Take Volume Tier". Under the proposed new tiers, orders that yield fee code NP would receive a discounted rate from the proposed $1.07 fee discussed above. The Exchange proposes to add three Non-Customer Non-Penny Pilot Take Volume Tiers, as set forth below.

- Tier 1, would provide a discounted rate of $1.02 in orders where: the (1) Member has an ADAV[8] in Customer[9] orders equal to or greater than 0.60% of average TCV[10]; (2) Member has an ADAV in Market Maker[11] orders equal to or greater than 0.30% of average TCV; and (3) Member has on Exchange's equity platform ("BZX Equities") an ADAV[12] equal to or greater than 0.30% of average TCV.
- Tier 2, would provide a discounted rate of $1.02 in orders where a Member has an ADAV in Customer orders equal to or greater than 1.00% of average TCV.
- Tier 3, would provide a discounted rate of $1.01 in orders where a Member has an ADAV in Customer orders equal to or greater than 1.30% of average TCV.

The Exchange notes that the criteria necessary to achieve the discounted rate under Tiers 1, 2, and 3 proposed above mirrors the criteria required by the existing Non-Customer Penny Pilot Take Volume Tiers under footnote 3 of the Exchange's fee schedule. In conjunction with the addition of footnote 13, the Exchange also proposes to append footnote 13 to fee code NP within the Fee Codes and Associate Fees table and update the Standard Rates table.

Quoting Incentive Program ("QIP") Tier

The Exchange currently offers four QIP tiers which provide an additional rebate per contract for an order that adds liquidity to the BZX Options Book in options classes in which a Member is a Market Maker registered on BZX Options pursuant to Rule 22.2. The Market Maker must be registered with BZX Options in an average of 20% or more of the associated options series in a class in order to qualify for QIP rebates for that class. Under the QIP Tiers, a Market Maker receives an additional rebate ranging from $0.02 to $0.06 per contract where that Market Maker satisfies certain ADV[13] thresholds. Under the highest tier, QIP Tier 4, a Market Maker receives an additional rebate of $0.06 per contract where that Market Maker has an ADV equal to or greater than 3.5% of average TCV. The Exchange proposes to eliminate QIP Tier 4 because the rebate has not achieved the desired effect, despite being designed to incentivize Market Markers to add liquidity to the BZX Options Book.

Logical Port Fees

A logical port represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-Member and grants that Member or non-Member the ability to operate a specific application, such as FIX order entry or PITCH data receipt. The Exchange's Multicast PITCH data feed is available from two primary feeds, identified as the "A feed" and the "C feed", which contain the same information but differ only in the way such feeds are received. The Exchange also offers two redundant fees, identified as the "B feed" and the "D feed." The Exchange also offers a bulk-quoting interface which allows Users[14] of BZX Options to submit and update multiple bids and offers in one message through logical ports enabled for bulk-quoting. The bulk-quoting application for BZX Options is a particularly useful feature for Users that provide quotations in many different options.

The Exchange currently charges for logical ports (including Multicast PITCH Spin Server and GRP ports) $650 per port per month and $1,500 per month for ports with bulk quoting capabilities. Where a User subscribes to more than five ports with bulk quoting capabilities, the Exchange charges for each port in excess of five $2,000 per logical port per month for logical ports with bulk quoting capabilities. Logical port fees are limited to logical ports in the Exchange's primary data center and no logical port fees are assessed for redundant secondary data center ports. The Exchange assesses the monthly per logical port fees to all Member's and non-Member's logical ports.

The Exchange proposes to clarify within its fee schedule how fees for logical ports may be pro-rated. As proposed, new requests will be pro-rated for the first month of service. Cancellation requests are billed in full month increments as firms are required to pay for the service for the remainder of the month, unless the session is terminated within the first month of service.

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule on August 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[15] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive.

Volume-based rebates such as those currently maintained on the Exchange have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

Fee Code NP

The Exchange believes that its proposal to change the standard fee charged for Customer orders that remove liquidity in Non-Customer Non-Penny Pilot Securities from $0.99 to $1.07 per contract is reasonable, fair and equitable because, while the change marks an increase in fees for orders in Non-Penny Pilot Securities, such proposed fees remain consistent with pricing previously offered by the Exchange as well as competitors of the Exchange and does not represent a significant departure from the Exchange's general pricing structure.[17] Additionally, this pricing structure will allow the Exchange to earn additional revenue that can be used to offset the addition of new pricing incentives, including those introduced as part of this proposal. The proposed rate change is also not unfairly discriminatory because it will apply equally to all Members.

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[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] As defined in the Exchange's fee schedule *available at http://www.batsoptions.com/support/fee_schedule/bzx/.*

[12] As defined in the BZX Equities' fee schedule *available at http://batstrading.com/support/fee_schedule/bzx/.*

[13] As defined in the Exchange's fee schedule *available at http://www.batsoptions.com/support/fee_schedule/bzx/.*

[14] A User on BZX Options is either a member of BZX Options or a sponsored participant who is authorized to obtain access to the Exchange's system pursuant to BZX Rule 11.3. *See* Exchange Rule 1.5(ee) [sic].

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

Non-Customer Non-Penny Pilot Take Volume Tier

The Exchange believes the volume-based discounted rates offered in the Non-Customer Non-Penny Pilot Take Volume Tiers are reasonable, fair, equitable and non-discriminatory for the reasons set forth above with respect to volume-based pricing generally, such changes will apply equally to all participants, and the change is intended to incentivize participants to further contribute to market quality on the Exchange. Moreover, the proposed changes will provide Members with an increased incentive to interact with orders in Non-Penny Pilot securities on the Exchange. The Exchange believes this will enhance market quality for all market participants and encourage increased participation of other orders wanting to interact with such Non-Customer Non-Penny Pilot orders, to further the benefit of all market participants.

The Exchange also believes that the proposed new tiers remain consistent with pricing previously offered by the Exchange as well as competitors of the Exchange. The Exchange notes that the criteria required to achieve proposed Tiers 1, 2, and 3 mirror those required to achieve the Non-Customer Penny-Pilot Take Volume Tiers 1, 2, and 3 under footnote 3 of the Exchange's fee schedule. Furthermore, the criteria required to achieve proposed Tier 1, 2, and 3 mirrors that required by the Customer Add Volume Tier 5, 4, and 6, respectively.

The Exchange further believes that the criteria necessary to achieve Tier 1 of the Non-Customer Non-Penny Pilot Take Volume Tier is reasonable, fair, equitable and non-discriminatory because to the extent a Member participates on the Exchange but not on BZX Equities [sic] based on the overall benefit to the Exchange resulting from the success of BZX Equities. Such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on BZX Equities or not. The proposed pricing program is also fair and equitable in that membership in BZX Equities is available to all Members which would provide them with access to the benefits provided by the proposed tier, as described above, even where a Member of BZX Equities is not necessarily eligible for the proposed increased rebates on the Exchange.

QIP Tier

The Exchange believes that its proposal to eliminate QIP Tier 4 under footnote 5 represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. As described above, the additional rebates offered under this tier is not affecting Members' behavior in the manner originally conceived by the Exchange. Additionally, the Exchange currently provides three other QIP Tiers which offer additional rebates to qualifying Members adding liquidity. While the Exchange acknowledges the benefit of Members entering orders which add liquidity, the Exchange has determined that it is providing additional rebates for liquidity that would be added regardless of whether the tier existed. By providing this rebate, the Exchange is not only offering a rebate for orders that would add liquidity without being incentivized to do so, but also bypassing the opportunity to offer other rebates or reduced fees which could incentivize other behavior that would enhance market quality on the Exchange and benefit all Members. As such, the Exchange believes the proposed elimination of the QIP Tier 4 would be non-discriminatory in that it currently applies equally to all Members and, upon elimination, would no longer be available to any Members. Further, it will allow the Exchange to explore other ways in which it may enhance market quality for all Members.

Logical Port Fees

The Exchange believes that the proposed clarification on how logical port fees may be pro-rated is consistent with Section 6(b)(4) of the Act,[18] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The proposed rule change seeks to provide clarity to subscribers regarding the Exchange's pro-rata billing policy for logical ports by describing how logical port fees may be pro-rated for a new request and upon cancellation. The Exchange believes that the proposed pro-rata billing of fees for logical ports is reasonable in that it is similar to how port fees are pro-rated by the Nasdaq Stock Market LLC ("Nasdaq").[19]

The Exchange operates in a highly competitive market in which exchanges offer connectivity services as a means to facilitate the trading activities of Members and other participants. Accordingly, fees charged for connectivity are constrained by the active competition for the order flow of such participants as well as demand for market data from the Exchange. If a particular exchange charges excessive fees for connectivity, affected Members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, an exchange charging excessive fees would stand to lose not only connectivity revenues, but also revenues associated with the execution of orders routed to it by affected members, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange has designed the proposed amendments to its fee schedule to enhance its ability to compete with other exchanges. Rather, the proposal as a whole is a competitive proposal that is seeking to further the growth of the Exchange. The Exchange has structured certain fees and rebates proposed herein to attract certain additional volume in both Customer and certain Non-Customer orders, however, the Exchange believes that its pricing for all capacities is competitive with that offered by other options exchanges. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes to the Exchange's tiered pricing structure burdens competition, but instead enhances competition by increasing the competitiveness of the Exchange. The Exchange believes that the price changes contribute to, rather than burden competition, as such changes are broadly intended to incentivize participants to increase their participation on the Exchange, which will increase the liquidity and market quality on the Exchange and further enhance the Exchange's ability to compete with other exchanges.

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[17] NYSE Arca, Inc. ("NYSE Arca") charges a fee of $1.08 to non-customer orders that remove liquidity in Non-Penny Pilot Securities. *See* NYSE Arca Options fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.* Similarly, the Nasdaq Stock Market LLC ("Nasdaq") charges a fee of $1.10 to non-customer orders that remove liquidity in Non-Penny Pilot Securities. *See* Nasdaq Options fee schedule *available at http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing.*

[18] 15 U.S.C. 78f(b)(4).

[19] *See* Nasdaq Price List—Trade Connectivity *available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#connectivity.* The Exchange notes that, unlike as proposed by the Exchange, Nasdaq does not pro-rate where the session is terminated within the first month of service.

With regard to the proposed logical port fee amendment, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including logical port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Members and non-Members equally.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and paragraph (f) of Rule 19b–4 thereunder.[21] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR-BatsBZX–2016–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-BatsBZX–2016–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsBZX–2016–44 and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19320 Filed 8–12–16; 8:45 am]

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[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78513; File No. SR–CBOE–2016–058]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 24.6

August 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Rule 24.6. The text of the proposed rule change is provided below.

(additions are *underlined;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 24.6. Days and Hours of Business

(a)–(b) No change

. . . *Interpretations and Policies:*

.01–.05 No change.

.06 With respect to options on a foreign index that is comprised of component securities trading in a single country, the Exchange may determine

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

not to open the options for trading when the component securities of the foreign index are not trading due to a holiday on the foreign exchange(s) at which the component securities trade. At least once a year in January, the Exchange will announce via Regulatory Circular the days on which options on a particular foreign index will be closed pursuant to this interpretation.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to add Interpretation and Policy .06 to Rule 24.6 in order to specify that the Exchange may determine not to open for trading options on a foreign index that is comprised of component securities trading in a single country when the component securities of the foreign index are not open for trading due to a holiday on the foreign exchange or exchanges on which the component securities trade.

Rule 6.1.04 identifies the days on which the Exchange is not open due to a holiday.[3] Exchanges in foreign countries also have their own holiday schedules.[4] As CBOE lists and trades options that overlie various foreign indexes,[5] the components of which trade on foreign exchanges, CBOE proposes to specify in its Rules that the Exchange may determine to not open options on foreign indexes when the component securities of the foreign index are not open for trading due to a holiday on the foreign exchange; however, the Exchange proposes to limit the application of this proposal to options on foreign indexes that are comprised of component securities trading in a single country.[6]

The Exchange may trade options on various foreign indexes after trading in all component securities has closed for the day and the index level is no longer widely disseminated at least once every fifteen seconds, provided that futures on the applicable indexes are trading and prices for those contracts may be used as a proxy for the current index value.[7] For example, the component securities of the FTSE China 50 Index open with the start of trading on the Stock Exchange of Hong Kong ("SEHK") at approximately 8:30 p.m. (Chicago time) (prior day) and close with the end of trading on the SEHK at approximately 3:00 a.m. (Chicago time) (next day). Thus, between 8:30 a.m. and 3:15 p.m. (Chicago time) the FTSE China 50 Index level is a static value that market participants can access via data vendors. However, the Exchange continues to trade options on the FTSE China 50 Index ("China 50 options") from 8:30 a.m. Chicago time to 3:15 a.m. Chicago time because prices of the E-Mini FTSE China 50 Index futures trading at the CME may be used as a proxy for the current index value.[8] When SEHK is closed because of a holiday, E-Mini FTSE China 50 Index futures remain open and may still be used as a proxy for the current index value. However, the Exchange may determine to keep China 50 Options (as well as other options on other foreign indexes) closed because of a holiday on SEHK (or the applicable foreign exchange on which the index constituents trade).

For example, prior to the launch of China 50 options, SEHK was closed from the weekend of February 7–8 through the 2016 Lunar New Year from February 8–10. Although E-Mini FTSE China 50 Index futures can be used as a proxy, the Exchange may have determined that options participants would be better served by keeping China 50 options closed because the holiday caused the underlying index value to be unavailable for an extended period of time.

With respect to options on foreign indexes specifically, the Exchange has the authority to set the days and hours of business.[9] This proposal simply seeks to add Interpretation and Policy .06 to notify market participants that the Exchange may determine not to open options on foreign indexes because of a holiday on a foreign exchange. Furthermore, as proposed, Interpretation and Policy .06 will also require the Exchange to announce via Regulatory Circular in January of every year the particular days on which options on particular foreign indexes will not be open due to a holiday on a foreign exchange or exchanges. However, there may be holidays between the date this proposal becomes effective and the following January; thus, the first announcement will be made via Regulatory Circular within 30 days of this proposal becoming effective.

Although keeping options closed because of a foreign exchange's holidays will cause users of these particular options to not be able to trade when the U.S. market is otherwise open, the closures will only occur a few times a year. Furthermore, users will have sufficient notice of such closures via the Regulatory Circular that will be published every January. Finally, this proposal may potentially allow users to receive better executions because for certain holidays, such as during the Lunar New Year described above, the closing of the component securities may not allow Market-Makers to quote as tightly and aggressively as they would otherwise. In effect, limiting users' ability to trade particular index options to days on which there is not a holiday on a foreign exchange may better serve users because they will be trading on days in which Market-Makers may potentially provide tighter markets.

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[3] Rule 6.1.04 provides that "[t]he Board of Directors has determined that the Exchange will not be open for business on New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day. The Board has also determined that, when any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday, and that when any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the following Monday, unless unusual business conditions exist at the time."

[4] *See e.g.,* Stock Exchange of Hong Kong Holiday Schedule, available at: *https://www.hkex.com.hk/eng/market/sec_tradinfo/tradcal/nont10.htm* and London Stock Exchange Holiday Schedule, available at: *http://www.lseg.com/areas-expertise/our-markets/london-stock-exchange/equities-markets/trading-services/business-days.*

[5] *See e.g.,* Rules 24.2.01, 24.2.02, and 24.2.03.

[6] The Exchange notes that when there are multiple exchanges in a single country trading the component securities of a foreign index the holiday schedule for exchanges within that country are likely to be the same or similar.

[7] *See* Rules 24.2.01(a)(8), 24.2.02(a)(8), and 24.2.03(a)(8).

[8] The trading hours for E-Mini FTSE China 50 Index Futures are from 5:00 p.m. (Chicago time) to 4:00 p.m. (Chicago time) the following day, Sunday through Friday. *See* E-Mini FTSE China 50 Index Future Contract specifications located at: *http://www.cmegroup.com/education/files/e-mini-ftse-china-50-index-futures.pdf.* The Exchange believes E-Mini FTSE China 50 Index Futures are an appropriate proxy for China 50 options.

[9] *See* Rule 24.6(a) (providing that with respect to options on foreign indexes, the Board's designee shall determine the days and hours of business.).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposal helps to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by: (1) Limiting users' ability to trade particular index options to days on which there is not a holiday on a foreign exchange because doing so allows users of these index options to trade on days in which Market-Makers may potentially provide tighter markets and (2) providing a mechanism for notifying market participants of the days on which options on a particular foreign index will not be open due to a holiday on the foreign exchange(s) on which the index constituents trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal will not impose a burden on intramarket competition because all participants will be subject to the same holiday schedule as set forth by the Exchange. Furthermore, all participants will have adequate notice of the holiday schedule by virtue of the Exchange publishing a Regulatory Circular in January of every year that announces such holidays. The proposal will not impose a burden on intermarket competition because the options effected by this proposal are options on foreign indexes that are exclusive to CBOE. Any perceived burden on users of these options is outweighed by the fact that users may potentially receive better executions by trading on days on which Market-Makers may potentially be able to provide tighter markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–058 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–058. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–058 and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19318 Filed 8–12–16; 8:45 am]

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[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78509; File No. SR–IEX–2016–08]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 11.190(f) To Make Correcting and Clarifying Changes

August 9, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 1, 2016, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6)(iii) thereunder,[5] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[6] and Rule 19b–4 thereunder,[7] Investors Exchange LLC ("IEX" or "Exchange") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend Rule 11.190(f) to (i) eliminate obsolete references to route to rest functionality, (ii) replace the phrase "displayed interest" with "displayable interest" to more clearly describe how the IEX System handles such interest in a One-Sided Market, and (iii) describe how orders are handled in a Zero Market when a contra-side Protected Quotation returns. The Exchange has designated this rule change as non-controversial under Section 19(b)(3)(A) of the Act[8] and provided the Commission with the notice required by Rule 19b–4(b)(6)(iii) thereunder.[9]

The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement [sic] may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.190(f) to (i) eliminate obsolete references to route to rest functionality in subparagraphs (4)(B)(i)(b) and 5(B), (ii) replace the phrase "displayed interest" with "displayable interest" in subparagraphs (4)(B), (4)(B)(i)(a) and (4)(B)(ii)(a) to more clearly describe how the IEX System handles such interest in a One-Sided Market, and (iii) describe, in subparagraphs 5(A) and 5(B), how orders are handled in a Zero Market when a contra-side Protected Quotation returns.

With respect to references to route to rest functionality, subparagraphs (4)(B)(i)(b) and (5)(B) reference Rule 11.230(c)(6). However, Rule 11.230(c)(6) was deleted in connection with Amendment No. 3 to IEX's Form 1 application under the Act, seeking registration as a national securities exchange pursuant to Section 6 of the Act.[10] In Amendment No. 3,[11] IEX proposed changes to redesign its outbound routing functionality, which changes included eliminating route to rest routing functionality previously described in Rule 11.230(c)(6). However, IEX inadvertently failed to delete references to such functionality in subparagraphs (4)(B)(i)(b) and (5)(B) of Rule 11.190(f).

Currently, subparagraph (4)(B)(i)(b) of Rule 11.190(f) provides that in a One-Sided Market (which lacks either a Protected Bid or Protected Offer) routable displayable orders on the same side as the Protected Quotation can route passively to rest on away trading centers. Similarly, subparagraph (5)(B) of Rule 11.190(f) provides that in a Zero Market (in which neither a Protected Bid nor Protected Offer exists) routable displayable orders can route passively to rest on away trading centers. As proposed, such orders will not be eligible to route passively to rest on away trading centers, while the One-Sided Market or Zero Market, as applicable, exists. Accordingly, IEX proposes to update its rules to delete those provisions.

IEX also proposes to replace the phrase "displayed interest" with "displayable interest" in subparagraphs (4)(B), (4)(B)(i)(a) and (4)(B)(ii)(a) to more clearly describe how the IEX System handles such interest in a One-Sided Market. Specifically, the subparagraphs noted above use the term "displayed interest" when describing trading interest that is eligible for display but may not have been displayed. Accordingly, the Exchange proposes to change such references to "displayable interest" since the applicable rule provisions describe the handling of orders that are displayable even if not displayed.

Finally, the Exchange proposes to describe, in subparagraphs 5(A) and 5(B) of Rule 11.190, how orders are handled in a Zero Market when a contra-side Protected Quotation returns. Currently, those provisions describe how non-displayed and displayable interest is handled in a Zero Market (*i.e.,* in which neither a Protected Bid nor Protected Offer exists), but do not describe how orders are handled when a Protected Quotation returns on one side of the market. As proposed, Rule 11.190(5)(A) and (B) provide that when a contra-side Protected Quotation returns, the system will route routable orders consistent with Rule 11.230(b)(2), if eligible for re-sweep. This change thus addresses when a Two-Sided or One-Sided Market returns.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act, in general and with Sections 6(b)[12] of the Act in general, and furthers the objectives of Section 6(b)(5)[13] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes it is appropriate to make the specified corrections so that its rules clearly describe the manner in which its systems operate by removing obsolete text and clarifying the operation of the rule when a protected quotation returns. The proposed changes do not introduce new functionality but merely make the rule more complete and precise. Further, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it will provide for accuracy and consistency in the Exchange's rules and alleviate any confusion among market participants.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] 15 U.S.C. 78s(b)(1).

[7] 17 CRF 240.19b–4.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 15 U.S.C. 78f.

[11] *See,* Securities Exchange Act Release No. 77406 (March 18, 2016).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because IEX is amending its rules to provide for accuracy and consistency. The Exchange is merely removing obsolete language and clarifying the operation of the rule, therefore no new burdens are being proposed.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[14] of the Act and Rule 19b–4(f)(6)[15] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[16] The Exchange notes that its proposal merely amends the Exchange's rules to provide for accuracy and consistency. The Exchange has asked the Commission to waive the 30-day operative delay, making the proposal operative upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposal immediately to remove some obsolete rule text and separately add helpful additional clarifying detail to its one-sided and zero markets provision, which may alleviate potential confusion among market participants before IEX begins operations as an exchange. Further, the proposal adds clarifying detail to the rule without materially amending the operation of the rule or raising any new or novel issues. For these reasons, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File* SR–IEX–2016–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2016–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2016–08 and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19314 Filed 8–12–16; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78521; File No. SR–NYSEArca–2016–108]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect a Change in the Permitted Size of a Basket Applicable to Shares of ETFS Physical Silver Shares Issued by the ETFS Silver Trust

August 9, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 27, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect a change in the permitted size of a "Basket" applicable to shares of ETFS Physical Silver Shares ("Fund") issued by the ETFS Silver Trust. The Fund is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.201. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares ("Shares") of the Fund under NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares.[4] The Shares are offered by ETFS Silver Trust (the "Trust").[5] The Shares represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of silver bullion, less the Trust's expenses.[6] ETF Securities USA LLC is the sponsor of the Trust ("Sponsor"), The Bank of New York Mellon is the trustee of the Trust and HSBC Bank plc. is the custodian of the Trust. The Fund's Shares are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.201.

As described in the Prior Order, issuances of Shares will be made only in "Baskets" of 100,000 Shares or multiples thereof. The Exchange proposes to eliminate the representation in the Prior Order regarding the size of a Basket. Going forward, the size of a Basket will be no greater than 100,000 Shares and the size of a Basket will be subject to change, but always equal to or less than 100,000 Shares.[7] The Fund currently plans to change the size of a Basket to 50,000 Shares.[8] The Exchange believes that the change to the size of a Basket will not adversely impact investors or Exchange trading. In addition, a reduction in the size of a Basket may provide potential benefits to investors by facilitating additional creation and redemption activity in the Shares, thereby potentially resulting in increased secondary market trading activity, tighter bid/ask spreads and narrower premiums or discounts to NAV.[9]

The Sponsor represents that the proposed change to provide that the size of a Basket will be no greater than 100,000 Shares and subject to change, but always equal to or less than 100,000 Shares, as well as to reduce the Basket size to 50,000 Shares, as described above, is consistent with the Fund's investment objective, and will further assist the Sponsor to achieve such investment objective. Except for the change noted above, all other representations made in the Prior Order, the First Prior Notice and the Second Prior Notice remain unchanged.[10] The Fund and the Shares will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.201.

The Sponsor represents that the investment objective of the Fund is not changing.

The Sponsor has represented to the Exchange that it will advise the

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[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[5] The Trust is registered under the Securities Act of 1933 ("1933 Act"). See Post-Effective Amendment No. 1 on Form S–3 under the 1933 Act for the ETFS Silver Trust, filed with the Commission on August 8, 2014 (No. 333–195514) ("Registration Statement").

[6] The Commission approved listing and trading of Shares of the Fund on NYSE Arca in Securities Exchange Act Release No. 59781 (April 14, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Listing and Trading of Shares of the ETFS Silver Trust) ("Prior Order"); See also Securities Exchange Act Release Nos. 72847 (August 14, 2014), 79 FR 49350 (August 20, 2014) (SR–NYSEArca–2014–88) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change (1) to Reflect a Change to the Value Used by the iShares Silver Trust, ETFS Silver Trust, ETFS White Metals Basket Trust and ETFS Precious Metals Basket Trust with Respect to Calculation of the Net Asset Value of Shares of each Trust; and (2) to Reflect a Change to the Underlying Benchmark for ProShares Ultra Silver and ProShares UltraShort Silver) ("First Prior Notice"); 77830 (May 13, 2016), 81 FR 31671 (May 19, 2016) (SR–NYSEArca–2016–72) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Changes to Procedures Regarding Establishing the LBMA Silver Price) ("Second Prior Notice").

[7] The Exchange notes that the Commission has approved the listing and trading of other issues of exchange-traded products for which the size of a "Creation Unit" is subject to change. *See e.g.,* Securities Exchange Act Release Nos. 77522 (April 5, 2016), 81 FR 21420 (April 11, 2016) (SR–NYSEArca–2015–125) (order approving Exchange listing and trading of Shares of the of RiverFront Dynamic Unconstrained Income ETF and RiverFront Dynamic Core Income ETF under NYSE Arca Equities Rule 8.600); 76719 (December 21, 2015), 80 FR 80859 (December 28, 2015) (SR–NYSEArca–2015–73) (order approving listing and trading of shares of the Guggenheim Total Return Bond ETF under NYSE Arca Equities Rule 8.600).

[8] The change to size of a Basket will be effective upon filing with the Commission of an amendment to the Trust's Registration Statement filed pursuant to Rule 424(b)(3) under the 1933 Act, and shareholders will be notified of such change by means of such amendment.

[9] The Exchange notes that the Commission has approved the listing and trading of other issues of exchange-traded products that have applied a minimum "Creation Unit" size of 50,000 shares. *See, e.g.,* Securities Exchange Act Release Nos. 65458 (September 30, 2011), 76 FR 62112 (October 6, 2011) (SR–NYSEArca–2011–54) (order approving listing and trading of WisdomTree Dreyfus Australia and New Zealand Debt Fund); 66112 (January 5, 2012), 77 FR 1761 (January 11, 2012) (SR–NYSEArca–2011–80) (order approving listing and trading of Rockledge SectorSAM ETF).

[10] *See* note 6, *supra.* All terms referenced but not defined herein are defined in the First Prior Notice.

Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Except for the changes noted herein, all other facts presented and representations made in the Rule 19b–4 filing underlying the Prior Order, the First Prior Notice and the Second Prior Notice remain unchanged.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[11] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that providing for a Basket size of no greater than 100,000 Shares (with the size of a Basket subject to change, but always equal to or less than 100,000 Shares), and changing the Basket size to 50,000 Shares, will not adversely impact investors or Exchange trading. In addition, a reduction in the size of a Basket may provide potential benefits to investors by facilitating additional creation and redemption activity in the Shares, thereby potentially resulting in increased secondary market trading activity, tighter bid/ask spreads and narrower premiums or discounts to NAV.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change, by providing that the size of a Basket is subject to change, but always equal to or less than 100,000 Shares, will provide the Fund with additional flexibility in administering the creation and redemption of Shares, which will enhance competition among issues of Commodity-Based Trust Shares.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because a reduction in the size of a Basket may provide potential benefits to investors by facilitating additional creation and redemption activity in the Shares, thereby potentially resulting in increased secondary market trading activity, tighter bid/ask spreads and narrower premiums or discounts to NAV. Therefore, the Commission designates the proposed rule change to be operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–108. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–108 and should be submitted on or before September 6, 2016.

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[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19323 Filed 8–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78508; File No. SR–C2–2016–016]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule

August 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2016, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. Specifically, the Exchange proposes to establish a fee scale for the purchase of Market Maker Quoting and Order Bandwidth Packets ("Bandwidth Packets"), provide for an allotment scale of CMI CAS Servers, and adopt a fee for extra CMI CAS Servers.

The Exchange first proposes to adopt a fee scale for Bandwidth Packets. Particularly, the Exchange proposes to provide that the first through ninth Bandwidth Packets obtained by a Trading Permit Holder ("TPH") would cost $1,000 per packet per month, the tenth through fourteenth Bandwidth Packets obtained by that TPH would cost $500 per packet per month, and the fifteenth and each additional Bandwidth Packet obtained by that TPH would cost $250 per packet per month. The Exchange believes the proposed fee scale will encourage Market Makers to purchase additional Bandwidth Packets which will allow them to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants.

The Exchange next proposes to amend its Fees Schedule with respect to Connectivity Charges. By way of background, in order to connect to CBOE Command, which allows a TPH to trade on the C2 System, a TPH must connect via either a CMI or FIX interface (depending on the configuration of the TPH's own systems). For TPHs that connect via a CMI interface, they must use CMI CAS Servers. Currently each TPH is provided one CAS Server plus access to a pool of shared backup CAS Servers. In order to ensure that a CAS Server is not overburdened by quoting activity for Market Makers, the Exchange proposes to allot each Market Maker a certain number of CASs (in addition to the shared backups) based on the amount of quoting bandwidth that they have. Quoting Bandwidth would be determined by the number of Bandwidth Packets the TPH holds in addition to 5 times the number of Market Maker Trading Permits it holds.[3] Additionally, the Exchange will aggregate the Market Maker Trading Permits and Market Maker Quoting and Order Entry Bandwidth Packets from affiliated TPHs (TPHs with at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A) for purposes of determining the number of Trading Permits and Market Maker Quoting and Order Entry Bandwidth Packets a TPH holds. Particularly, the Exchange proposes to add a chart listing the amounts of equivalent Bandwidth Packets and corresponding CAS Servers:

Total bandwidth packets equivalency	CAS Servers
1–25	1 + shared backup.
26–50	2 + shared backup.
51–75	3 + shared backup.
76–100	4 + shared backup.
100+	5 + shared backup.

Next, the Exchange proposes to provide that if a Market Maker wishes to connect via an extra CMI CAS Server (in order to segregate TPH users for business or availability purposes) beyond the TPH's allotted number of CMI CAS Servers (described above), that TPH will be assessed a fee of $2,000 per month for each extra CMI CAS Server. The purpose of this proposed change is to manage the allotment of CMI CAS Servers in a fair manner and to prevent the Exchange from being required to expend large amounts of resources (the provision and management of the CMI CAS Servers can be costly) in order to provide TPHs with an unlimited amount of CMI CAS Servers. The purpose of the fee for extra CMI CAS Servers is to cover the costs related to the provision, management and upkeep of such CMI CAS Servers.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that a C2 Market Maker Quoting and Order Entry Bandwidth Packet is equivalent to 1/5th of a Market Maker Trading Permit. As such, each Market-Maker Trading Permit a TPH holds is equivalent to 5 Quoting and Order Entry Bandwidth Packet for purposes of bandwidth. Therefore, if a TPH has 2 Market Maker Trading Permits and 16 Quoting and Order Entry Bandwidth Packets, the TPH has an equivalent of 26 Bandwidth Packets. The Exchange proposes to include this example in the Fees Schedule to provide additional clarity.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

The Exchange believes the proposed rule change is reasonable because the proposed change provides the opportunity to have lower fees for the Market Maker Quoting and Order Entry Bandwidth Packets than previously. The proposed change is also equitable and not unfairly discriminatory because the fee scale will apply to all Market Makers uniformly. The Exchange believes it's equitable and not unfairly discriminatory to establish a discounted fee scale for Market Maker Quoting and Order Entry Bandwidth Packets because Market Makers, unlike other C2 market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, the proposed change is intended to incent Market Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants.

The Exchange believes that the proposed change regarding CMI CAS Servers is reasonable because each CMI CAS Server should be capable of handling the bandwidth needs of at least the equivalent of 25 Bandwidth Packets. This proposed allotment is equitable and not unfairly discriminatory because it will be applied to all Market Makers accessing CBOE Command via a CMI connection. It is equitable and not unfairly discriminatory to provide allotment of CASs for Market Makers only, because the impact of non-quoting activity does not result in the need for more than one CAS. The proposed fee of $2,000 for each extra CMI CAS Server that a Market Maker requests is reasonable because it allows the Exchange to recoup the costs related to the provision, maintenance and upkeep of such Servers, and is equitable and not unfairly discriminatory because the fee will be applied to all Market Makers that request an extra CMI CAS Server.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees apply to Market-Maker Quoting and Order Bandwidth Packets, Market-Makers have different obligations and different circumstances (as described in the "Statutory Basis" section above). Additionally, the proposed change is intended to encourage Market Makers to quote more, which provides more trading opportunities for all market participants. The Exchange does not believe that the proposed allotment of one CMI CAS Server for every equivalent 25 Market Maker Bandwidth Packets that a TPH holds (plus one shared backup) and the proposed fee of $2,000 for each extra CMI CAS Server that a TPH requests will cause an unnecessary burden on intramarket competition because while such allotment and fee will only be applied to Market Makers accessing CBOE Command via a CMI connection, Market Makers have different obligations and different circumstances (as described in the "Statutory Basis" section above) and because market participants that do not quote would not need additional CASs.

The Exchange does not believe that the proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on the Exchange. Additionally the Exchange does not believe such proposed bandwidth scale, CAS allotment and fee will cause an unnecessary burden on intermarket competition because different exchanges have different systemic setups for connection to such exchanges and are likely not comparable or competitive. Should the proposed change make C2 a more attractive trading venue for market participants at other exchanges, such market participants may elect to become market participants at C2.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2016–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2016–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public

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[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2016–016, and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19313 Filed 8–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78525; File No. SR–NSCC–2016–002]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add a Clearing Fund Maintenance Fee

August 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2016, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the Addendum A (Fee Structure) of the Rules and Procedures (“Rules”) of NSCC in order to add a new fee that will be charged to Members and certain Limited Members[5] in connection with the maintenance of the Clearing Fund, as described in greater detail below.[6] Members and applicable Limited Members are collectively referred to herein as “members.”

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will add a fee that will be charged to members in connection with the maintenance of the Clearing Fund.

Clearing Fund Maintenance Fee

Pursuant to the proposed rule change, NSCC proposes to introduce a new fee, to be known as the Clearing Fund Maintenance Fee, which will be charged to members in arrears on a monthly basis.

The proposed rule change will (i) diversify NSCC's revenue sources and mitigate NSCC's dependence on revenues driven by trading volumes and (ii) add a stable revenue source that will contribute to NSCC's operating margin by offsetting increasing costs and expenses, as further described below.

Diversify Revenue Sources

NSCC's current revenues are highly variable due to the nature of the clearing services, which are primarily driven by trading volumes, but, as a utility, NSCC's expenses are largely fixed. The combination of fixed costs and variable revenues represents a financial risk for NSCC. To mitigate such financial risk, NSCC is seeking to diversify its variable revenue base with the proposed new fee, which will introduce a revenue source that is not dependent on trading volumes. The Clearing Fund Maintenance Fee will be ratably based on the member's Clearing Fund average cash deposit.

Offset Increasing Costs and Expenses

NSCC seeks to achieve a target operating margin to cover operating expenses and fund capital expenditures as well as investments in its clearing services and risk management infrastructure; however, NSCC faces continued increasing risk management costs as well as regulatory and compliance-related expenses that need to be offset by revenue growth in order to meet the target operating margin. Such increased costs and expenses, if not offset by revenue growth, could weaken NSCC's financial position over time. As such, NSCC is seeking to implement the Clearing Fund Maintenance Fee to add an additional revenue source to offset increasing costs and expenses.

Proceeds of the Clearing Fund Maintenance Fee will be used primarily to offset risk management costs, regulatory and compliance expenses and for general operating expenses.

Calculation

The amount of the monthly Clearing Fund Maintenance Fee for a member will be calculated monthly, in arrears, as the product of 0.25% and the average of the member's actual cash deposit to the Clearing Fund as of the end of each day of the month, multiplied by the number of days in that month and divided by 360; provided that, the investment rate of return on investment by NSCC of cash in the Clearing Fund for that month is equal to or greater than 0.25%. No fee will be charged to any member for a month in which the monthly rate of return on investment of cash in the Clearing Fund is less than 0.25%.

Based on the 2015 average actual cash deposits to the Clearing Fund, the expected annual revenue to be generated by the Clearing Fund Maintenance Fee is approximately $16 million.

Member Impact

The proposed rule change will impose the Clearing Fund Maintenance Fee on all members that are required to make deposits to the Clearing Fund.

The Clearing Fund Maintenance Fee is a monthly fee based ratably upon the amount of the member's daily actual cash deposited to the Clearing Fund; it is applicable when the monthly rate of return on investment of cash in the Clearing Fund is equal to or greater than 0.25%.

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] The proposed new fee will be imposed on Limited Members that are required to make deposits to the Clearing Fund. Currently, those Limited Members are Mutual Fund/Insurance Services Members and Fund Members organized under the laws of the Republic of Ireland.

[6] Capitalized terms not defined herein are defined in the Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

Because the Clearing Fund Maintenance Fee per member is proportional to the average monthly cash deposit of the member to the Clearing Fund, members that generate higher levels of activity and make greater use of NSCC's services will generally be subject to a higher fee, because such members typically maintain higher Clearing Fund deposits pursuant to the Rules.

NSCC views the proposed implementation of the Clearing Fund Maintenance Fee as a prudent way to minimize the magnitude of, and mitigate the need for, potential future increases in other fees.

The proposed change will take effect on August 1, 2016.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act[7] requires that NSCC's Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The proposed fee is equitably allocated among members because it is based on each member's utilization of NSCC's services, as measured by their Clearing Fund deposits. In addition, NSCC believes that the proposed fee is reasonable because it will enable NSCC to better align its revenue with the costs and expenses required for NSCC to provide services to its members with a nominal impact on members. Therefore, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(D).[8]

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed fee will be equitably allocated among members based on each member's utilization of NSCC's services. Members that have a higher level of activities and greater use of NSCC's services will generally be subject to a higher Clearing Fund Maintenance Fee and members with lower usage will pay less.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[9] of the Act and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2016–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2016–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2016–002 and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19326 Filed 8–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78514; File No. SR–BOX–2016–38]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility

August 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2016, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[7] 15 U.S.C. 78q–1(b)(3)(D).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule to adjust certain fees in Section I.B. of the BOX Fee Schedule on the BOX Market LLC ("BOX") options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 1, 2016. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to adjust certain fees in Section I.B. of the BOX Fee Schedule.

Exchange Fees

Primary Improvement Order

Under the tiered fee schedule for Primary Improvement Orders, the Exchange assesses a per contract execution fee to all Primary Improvement Order executions initiated by the particular Initiating Participant. Percentage thresholds are calculated on a monthly basis by totaling the Initiating Participant's Primary Improvement Order volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes. The Exchange proposes to adjust the fee assessed in Tier 5. Specifically, the Exchange proposes to reduce the fee to $0.02 from $0.05. The Exchange notes that it is not proposing any changes to the percentage thresholds and the quantity submitted will continue to be calculated on a monthly basis by totaling the Initiating Participant's Primary Improvement Order volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes.

BOX Volume Rebate ("BVR")

Next, the Exchange proposes to adjust a rebate within the BVR. Under the BVR, the Exchange offers a tiered per contract rebate for all PIP Orders and COPIP orders of 100 contracts and under. Percentage thresholds are calculated on a monthly basis by totaling the Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes. The Exchange proposes to increase the rebate in Tier 5 for PIP Orders to $0.12 from $0.10. The Exchange notes that it is not proposing any changes to the percentage thresholds and the quantity submitted will continue to be calculated on a monthly basis by totaling the Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that reducing the Primary Improvement Order fee to $0.02 for Initiating Participants who reach Tier 5 is reasonable, equitable and not unfairly discriminatory. The reduced fee is equitable and not unfairly discriminatory as it is available to all BOX Options Participants that initiate Auction Transactions, and they may choose whether or not to take advantage of the discounted fees. The Exchange believes that the proposed fee remains reasonable and competitive when compared to the auction transaction fees on other exchanges.[6]

The Exchange also believes the proposed change to the BVR in Section I.B. of the BOX Fee Schedule is reasonable, equitable and not unfairly discriminatory. The BVR was adopted to attract Public Customer order flow to the Exchange by offering these Participants incentives to submit their PIP and COPIP Orders to the Exchange and the Exchange believes it is appropriate to now amend a specific rebate within the BVR. The Exchange believes it is equitable and not unfairly discriminatory to amend the BVR, as all Participants have the ability to qualify for a rebate, and rebates are provided equally to qualifying Participants at each tier. Finally, the Exchange believes it is reasonable and appropriate to continue to provide incentives for Public Customers, which will result in greater liquidity and ultimately benefit all Participants trading on the Exchange. Other exchanges employ similar incentive programs;[7] and the Exchange believes that the proposed change is reasonable and competitive when compared to incentive fees at other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is simply proposing to amend certain fees and rebates for Auction Transactions within the BOX Fee Schedule. The Exchange believes that the volume based rebates and fees increase intermarket and intramarket competition by incenting Participants to direct their order flow to the exchange, which benefits all participants by providing more trading opportunities and improves competition on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[8] and

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[5] 15 U.S.C. 78f(b)(4) and (5).

[6] Comparative fees at other exchanges range from $0.05 to $0.20. *See* Section IV of the Phlx Pricing Schedule entitled "PIXL Pricing"; International Securities Exchange ("ISE") Schedule of Fees, Section I. Regular Order Fees and Rebates "Select Symbols."

[7] *See* Section B of the PHLX Pricing Schedule entitled "Customer Rebate Program;" ISE Gemini's Qualifying Tier Thresholds (page 6 of the ISE Gemini Fee Schedule); and CBOE's Volume Incentive Program (VIP).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2016–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–38, and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19319 Filed 8–12–16; 8:45 am]

BILLING CODE 8011–01–P

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[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78512; File No. SR–NYSE–2016–53]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 123D Relating to When a DMM May Reopen a Security Electronically

August 9, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 28, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 123D relating to when a DMM may reopen a security electronically. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 123D relating to when a DMM may reopen a security electronically. The proposed rule changes would provide greater specificity regarding the applicable reference price for determining when a DMM may effect a reopening transaction electronically.

Background

The Exchange recently amended Rule 123D to specify when DMMs may effect an opening of a security electronically.[4] Rule 123D(a)(1)(B) provides that openings may be effectuated manually or electronically (as provided for in Rule 104(b)(ii)) and that Exchange systems will not permit a DMM to open a security electronically if a DMM has manually entered Floor interest. Rule 123D(a)(1)(B)(i) further provides that, except under the conditions set forth in paragraph (a)(1)(B)(ii) of Rule 123D, a DMM may not effect an opening electronically if the opening transaction will be at a price more than 4% away from the Official Closing Price, as defined in Rule 123C(1)(e), or the matched volume will be more than: (a) 150,000 shares for securities with an average opening volume of 100,000 shares or fewer in the previous calendar quarter; or (b) 500,000 shares for securities with an average opening volume of over 100,000 shares in the previous calendar quarter.

Rule 123D(a)(1)(B)(ii) provides that if as of 9:00 a.m. Eastern Time, the E-mini S&P 500 Futures are ± 2% from the prior day's closing price of the E-mini S&P

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[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 78228 (July 5, 2016), 81 FR 44907(July 11, 2016) (SR–NYSE–2016–24) (Approval Order) *and* 77491 (March 31, 2016), 81 FR 20030 (April 6, 2016) (SR–NYSE–2016–24) (Notice of Filing) ("Opening Filing").

500 Futures, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market, a DMM may effect an opening electronically if the opening transaction will be at a price of up to 8% away from the Official Closing Price, as defined in Rule 123C(1)(e), without any volume limitations. The current rule is silent on the reference price for when a DMM may effect a reopening of a security electronically.

Proposed Rule Change

The Exchange proposes to amend Rule 123D(a)(1) to provide for how the Exchange would determine when a DMM may effect a reopening of a security electronically. First, because Rule 123D(a)(1) is applicable to reopenings, the Exchange proposes to add to Rule 123D(a) that unless otherwise specified, references to an open or opening in Rule 123D(a) also mean a reopening following a trading halt or pause in a security. This proposed rule text is based on the last sentence of Rule 123D(a)(2).[5] As proposed, this text would be applicable to Rules 123D(a)(1) and (a)(2) in addition to Rules 123D(a)(3)–(6), as currently provided for in Rule 123D(a)(2). The Exchange proposes to delete the last sentence of Rule 123D(a)(2) as duplicative of the proposed new rule text.

Second, because Rule 123D has always governed the reopening process, in addition to the opening process, the Exchange proposes to add language to paragraph (1) of Rule 123D(a) to provide for DMM responsibilities regarding the reopening process. As proposed, Rule 123D(a)(1) would explicitly state that it is the responsibility of each DMM to ensure that registered securities open as close to the end of a halt or pause, while at the same time not unduly hasty, particularly when at a price disparity from the last price on the Exchange.

Third, the Exchange proposes to amend Rule 123D(a)(1)(B)(i) to provide for the reference price that the Exchange would use to determine whether a DMM may effect a reopening electronically. As proposed, a DMM may not effect a reopening electronically if the reopening transaction would be at a price more than 4% away from the last price on the Exchange, rather than 4% away from the Official Closing Price. The Exchange also proposes to specify that the Official Closing Price would be used as the reference price for openings, but not reopenings.

The Exchange believes that when reopening a security, the Official Closing Price from the prior day would no longer be a relevant reference price because the security has already opened for trading. Rather, because the security has been subject to a halt or pause before reopening, the Exchange believes that using the last sale price on the Exchange would be more representative of the most recent price of a security. A reopening price that would be more than 4% away from the last Exchange sale price demonstrates a level of price movement in a security during the halt or pause that warrants the manual price discovery process for the reopening. If the reopening price were to be within 4% away from the last Exchange sale price, that security likely has not experienced as much price movement, and therefore an electronic reopening may be more appropriate.

To effect this proposed rule change, the Exchange proposes to break current Rule 123D(a)(1)(B)(i) into subsections in order to specify the applicable parameters for determining whether to open or reopen a security electronically. The proposed amended rule text would provide (new text underlined, deletions bracketed):

(i) Except under the conditions set forth in paragraph*s* (a)(1)(B)(ii) and (iii) of this Rule, a DMM may not effect an opening electronically if*:*

(a) the opening (but not reopening) transaction will be at a price more than 4% away from the Official Closing Price, as defined in Rule 123C(1)(e),

(b) the reopening transaction will be at a price more than 4% away from the last price on the Exchange, or

(c) the matched volume for the opening transaction will be more than:

[(a)](1) 150,000 shares for securities with an average opening volume of 100,000 shares or fewer in the previous calendar quarter; or

[(b)](2) 500,000 shares for securities with an average opening volume of over 100,000 shares in the previous calendar quarter.

Fourth, the Exchange proposes to amend Rule 123D(a)(1)(B)(ii) to similarly provide that the reference price that the Exchange would use to determine whether a DMM may effect a reopening electronically on more volatile trading days would be based on the last sale price on the Exchange.[6] The proposed amended rule text would provide (new text underlined):

(ii) If as of 9:00 a.m. Eastern Time, the E-mini S&P 500 Futures are +/−2% from the prior day's closing price of the E-mini S&P 500 Futures, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and order*ly* market, a DMM may effect an opening electronically if the opening transaction will be at a price of up to 8% away from the Official Closing Price, as defined in Rule 123C(1)(e), (for openings, but not reopenings) or the last sale price on the Exchange (for reopenings), without any volume limitations.[7]

Finally, the Exchange proposes to add new Rule 123D(a)(1)(B)(iii) to specify the reference price that the Exchange would use when reopening a security following a trading pause under Rule 80C or a market-wide halt under Rule 80B *and* a pre-opening indication has been published in a security under Rule 15. As proposed, under such circumstances, a DMM may not reopen such security electronically if the reopening transaction would be at a price outside of the last-published pre-opening indication. The Exchange believes that because price volatility was likely the cause of such trading pause or halt, if the DMM publishes a pre-opening indication in a security for a reopening following such trading pause or halt, the reopening price should be within such pre-opening indication price range, regardless of whether the security is reopened manually or electronically. If the price moves away from the last pre-opening indication, the DMM should publish a new pre-opening indication to provide notice of the new price range.[8] Because the DMM would need to reopen a security within such price indication range, the Exchange believes it is appropriate to prohibit a DMM from reopening electronically if the reopening price were to be outside of the last-published pre-opening indication. The proposed new rule text would provide (new text underlined):

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[5] *See* Rule 123D(a)(2) ("Unless otherwise specified, references to an open or opening in paragraphs (a)(3)–(a)(6) of this Rule also mean a reopening following a trading halt or pause."). *See also* Supplementary Material .10 to Rule 15 ("Unless otherwise specified in this Rule, references to an opening transaction include a reopening transaction following a trading halt or pause in a security.")

[6] The first clause of Rule 123D(a)(1)(B)(ii) specifically governs assessing volatility before the opening of trading *i.e.*, assessing volatility based on the E-mini S&P 500 Futures before 9:00 a.m. Eastern Time to determine whether to widen the opening parameters. Based on the proposed changes to Rule 123D(a), discussed above, to specify that reference to the opening also refers to a reopening, the second clause of the current rule, *i.e.*, that the Exchange may widen the opening parameters if it determines that it is necessary or appropriate for the maintenance of a fair and orderly market, would also apply to reopenings. For example, during a market-wide halt under Rule 80B, the futures markets may also halt trading in related securities. However, because of the market-wide volatility that triggered such halt, the Exchange may determine that it is appropriate to widen the parameters for when a DMM may effect a reopening electronically, even in the absence of a benchmark index to measure volatility.

[7] The Exchange proposes a non-substantive, technical amendment to change the phrase "fair and order market" to provide instead "fair and orderly market" in Rule 123D(a)(1)(B)(ii).

[8] *See* Rule 15(e)(2) (a pre-opening indication must be updated if the opening transaction would be at a price outside of a published pre-opening indication).

(iii) When reopening a security following a trading pause under Rule 80C or a market-wide halt under Rule 80B, if a pre-opening indication has been published in a security under Rule 15, a DMM may not reopen such security electronically if the reopening transaction will be at a price outside of the last-published pre-opening indication.

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Because of the technology changes associated with the proposed rule change, the Exchange will announce by Trader Update the implementation date of the changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that amending Rule 123D(a) to specify that unless otherwise provided, all of Rule 123D(a) is applicable to both openings and reopenings would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency regarding the scope of the rule. The proposed change is also consistent with current Rule 123D(a)(2) and Supplementary Material .10 to Rule 15, which similarly provide that references to an opening also refers to a reopening, unless otherwise specified.

The Exchange further believes that amending Rule 123D to specify when a DMM may effect a reopening electronically would remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting transparency in Exchange rules regarding under what circumstances a DMM may effect a reopening electronically. The Exchange believes that using the last Exchange sale price as a reference price would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because using the last sale price on the Exchange would be more representative of the most recent price of a security from before the halt or pause. In addition, the Exchange believes that if a security were to reopen more than 4% (or 8% on a more volatile trading day) from that reference price, such reopening would likely benefit from the manual price discovery process. The Exchange further believes that it would remove impediments to and perfect the mechanism of a free and open market to double the parameters for when a DMM may reopen a security electronically if the Exchange believes that it is necessary or appropriate for the maintenance of a fair and orderly reopening of a security.

The Exchange also believes that it would remove impediments to and perfect the mechanism of a free and open market to provide that a DMM may reopen a security electronically if the reopening transaction would be at a price outside of the last-published pre-opening indication when reopening a security following a trading pause under Rule 80C or a market-wide halt under Rule 80B and a pre-opening indication has been published under Rule 15. Finally, the Exchange believes that the proposal would advance the efficiency and transparency of the reopening process, thereby fostering accurate price discovery at the reopen of trading. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather promote greater efficiency and transparency at the reopen of trading on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange believes that waiver will provide clarification to its updated Disaster Recovery Plan, which has been filed with the Commission. The Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

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[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2)(B).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–53, and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19317 Filed 8–12–16; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78522; File No. SR-BatsEDGX–2016–40]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of the Exchange's Options Platform

August 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-Members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform ("EDGX Options") to: (i) Modify the criteria necessary to achieve Customer Volume Tier 5; (ii) modify criteria necessary to achieve Market Maker Volume Tier 7 and decrease the corresponding rate; and (iii) adopt a new tier entitled the "Firm Penny Pilot Cross-Asset Tier".

The Exchange determines the reduced fee or enhanced rebate using a tiered pricing structure offering two tiers under footnotes 1 and 2 of the fee schedule, Customer Volume Tiers and Market Maker Volume Tiers, respectively. Under the tiers, Members that achieve certain volume criteria may qualify for reduced fees or enhanced rebates for Customer[6] and Market Maker[7] orders. The Exchange proposes to modify the criteria necessary to achieve Customer Volume Tier 5 under footnote 1, and modify the corresponding rate and criteria necessary to achieve Market Maker Volume Tier 7 under footnote 2. The Exchange also proposes to adopt a new tier entitled the "Firm Penny Pilot Cross-Asset Tier" under a new footnote 4.

Customer Volume Tier 5. Fee codes PC and NC are currently appended to all Customer orders in Penny Pilot Securities[8] and Non-Penny Pilot Securities,[9] respectively, and result in a standard rebate of $0.05 per contract. The Customer Volume Tiers in footnote 1 consist of five separate tiers, each providing an enhanced rebate to a Member's Customer order that yields fee codes PC or NC upon satisfying monthly volume criteria required by the respective tier. For instance, pursuant to Customer Volume Tier 1, the lowest volume tier, a Member will receive a rebate of $0.10 per contract where the Member has an ADV[10] in Customer orders equal to or greater than 0.15% of average TCV.[11]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] As defined in the Exchange's fee schedule *available at http://www.batsoptions.com/support/fee_schedule/edgx/.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

Pursuant to Customer Volume Tier 5, a Member currently will receive a rebate of $0.21 per contract where: (i) The Member has an ADV in Customer orders equal to or greater than 0.20% of average TCV; and (ii) the Member has an ADV in Market Maker orders equal to or greater than 0.10% of average TCV. To encourage the entry of additional orders, the Exchange proposes to modify the criteria necessary to achieve Customer Volume Tier 5 to require that: (i) The Member has an ADV in Customer orders equal to or greater than 0.05% of average TCV; and (ii) the Member has an ADV in Customer or Market Maker orders equal to or greater than 0.25% of average TCV. The Exchange believes that decreasing the first prong's ADV requirement and expanding the second prong to include Customer orders, despite increasing the corresponding ADV requirement, will make Customer Volume Tier 5 more attainable for additional Members who seek to receive the increased rebate for their orders that yield fee codes NC or PC.

Market Maker Volume Tier 7. Fee codes PM and NM are currently appended to all Market Maker orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively, and result in a standard fee of $0.19 per contract. The Market Maker Volume Tiers in footnote 2 consist of seven separate tiers, each providing a reduced fee or rebate to a Member's Market Maker order that yields fee codes PM or NM upon satisfying the monthly volume criteria required by the respective tier. For instance, pursuant to Market Maker Volume Tier 1, the lowest volume tier, a Member will pay a reduced fee of $0.16 per contract where the Member has an ADV in Market Maker orders equal to or greater than 0.05% of average TCV.

Pursuant to Market Maker Volume Tier 7, a Member will be charged a reduced fee of $0.10 per contract where the Member has an ADV in: (i) Customer orders equal to or greater than 0.20% of average TCV; (ii) Market Maker orders equal to or greater than 0.10% of average TCV. To encourage the entry of additional orders to the Exchange, the Exchange proposes to modify the criteria necessary to achieve Market Maker Volume Tier 7 to require that: (i) The Member has an ADV in Customer orders equal to or greater than 0.05% of average TCV; and (2) the Member has an ADV in Customer or Market Maker orders equal to or greater than 0.25% of average TCV. The Exchange believes that decreasing the first prong's ADV requirement and expanding the second prong to include Customer orders, despite increasing the corresponding ADV requirement, will make Customer Volume Tier 5 [sic] more attainable for additional Members who seek to receive the increased rebate for their orders that yield fee codes NM or PM. Additionally, the Exchange proposes to reduce the fee for the Market Maker Volume Tier 7 from $0.10 per contract to $0.03 per contract. In conjunction with the proposed tier, the Exchange also proposes to update the Standard Rate table.

Firm Penny Pilot Cross-Asset Tier. The Exchange proposes to amend its fee schedule to adopt a new tier under footnote 4 called the Firm Penny Pilot Cross-Asset Tier. The proposed tier would require participation on the Exchange's equities platform ("EDGX Equities") and would provide Members a reduced fee of $0.32 per contract for orders that yield fee code PF[12] where the Member: (i) Has an ADV in Firm[13] orders equal to or greater than 0.10% of average TCV; and (ii) has on EDGX Equities an ADAV[14] equal to or greater than 0.12% of average TCV. In conjunction with the proposed tier, the Exchange also proposes to appended footnote 4 to fee code PF in the Fee Codes and Associate Fees table and to update the Standard Rate table.

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule on August 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[15] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls.

The Exchange believes its proposed fees and rebates pursuant to the tiered pricing structure are reasonable, fair and equitable, and non-discriminatory. The Exchange operates in a highly competitive market in which market participants may readily send order flow to many competing venues if they deem fees at the Exchange to be excessive. As a new options exchange, the proposed fee structure remains intended to attract order flow to the Exchange by offering market participants a competitive yet simple pricing structure. At the same time, the Exchange believes it is reasonable to incrementally adopt incentives intended to help to contribute to the growth of the Exchange.

Volume-based rebates such as those currently maintained on the Exchange have been widely adopted by options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value of an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. The proposed modifications to the Customer Volume Tier 5 and Market Maker Volume Tier 7 and the addition of footnote 4, Firm Penny Pilot Cross-Asset Tier, are each intended to incentivize Members to send additional Customer and Market Maker orders to the Exchange in an effort to qualify for the enhanced rebate or lower fee made available by the tiers.

The Exchange believes that the proposal to add a Firm Penny Pilot Cross-Asset Tier is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees because it will provide Members with an additional incentive to reach certain thresholds on both EDGX Options and EDGX Equities. The increased liquidity from this proposal also benefits all investors by deepening the EDGX Options and EDGX Equities liquidity pools, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Such pricing programs thereby reward a Member's growth pattern on the Exchange and such increased volume increases potential revenue to the Exchange, and will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange. To the extent a Member participates on the EDGX Options but not on EDGX Equities, the Exchange does believe that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of EDGX Equities. As noted above, such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on EDGX Equities or not. The proposed pricing program is also fair and equitable in that membership in EDGX Equities is available to all market participants which would provide them with access to the benefits on EDGX Equities provided by the proposed changes, as described above, even where a member of EDGX Equities is not necessarily eligible for the proposed increased rebates on the Exchange.

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[11] As defined in the Exchange's fee schedule *available at http://www.batsoptions.com/support/fee_schedule/edgx/.*

[12] Fee code PF is appended to Firm orders in Penny Pilot Securities.

[13] As defined in the Exchange's fee schedule *available at http://www.batsoptions.com/support/fee_schedule/edgx/.*

[14] As defined in the EDGX Equities' fee schedule *available at http://batstrading.com/support/fee_schedule/edgx/.*

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed tiers are reasonable, fair and equitable, and non-discriminatory, for the reasons set forth above with respect to volume-based pricing generally and because such changes will incentivize participants to further contribute to market quality. The proposed tiers will provide an additional way for market participants to qualify for enhanced rebates or reduced fees. The Exchange also believes that the proposed tiered pricing structure is consistent with pricing previously offered by the Exchange as well as other options exchanges and does not represent a significant departure from such pricing structures.[17]

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange has designed the proposed amendments to its fee schedule to enhance its ability to compete with other exchanges. Rather, the proposal as a whole is a competitive proposal that is seeking to further the growth of the Exchange. The Exchange has structured certain fees and rebates proposed herein to attract certain additional volume in both Customer and certain Non-Customer[18] orders, however, the Exchange believes that its pricing for all capacities is competitive with that offered by other options exchanges. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that the alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that the price changes contribute to, rather than burden competition, as such changes are broadly intended to incentivize participants to increase their participation on the Exchange, which will increase the liquidity and market quality on the Exchange and further enhance the Exchange's ability to compete with other exchanges.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and paragraph (f) of Rule 19b–4 thereunder.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGX–2016–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-BatsEDGX–2016–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsEDGX–2016–40 and should be submitted on or before September 6, 2016.[21]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19324 Filed 8–12–16; 8:45 am]

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[17] *See, e.g.,* Bats BZX Exchange, Inc. ("BZX") Options Fee Schedule, Footnote 1, Customer Add Volume Tier 5, which provides an enhanced rebate to Customer orders on BZX Options based on both Customer volume and Market Maker volume. The BZX *Options Fee Schedule is available at: http://www.batsoptions.com/support/fee_schedule/bzx/.*

[18] As defined in the Exchange's fee schedule *available at http://www.batsoptions.com/support/fee_schedule/edgx/.*

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78523; File No. SR–NYSEArca–2016–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of Cumberland Municipal Bond ETF Under NYSE Arca Equities Rule 8.600

August 9, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 26, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): Cumberland Municipal Bond ETF. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares:[4] Cumberland Municipal Bond ETF (the "Fund"),[5] a series of the ETFis Series Trust I ("Trust").[6]

The investment adviser to the Fund will be Virtus ETF Advisers LLC (the "Adviser"). The Fund's sub-adviser will be Cumberland Advisors Inc. ("Sub-Adviser"). Virtus ETF Solutions LLC will serve as the Fund's operational administrator. ETF Distributors LLC will serve as the distributor (the "Distributor") of Fund Shares on an agency basis. The Bank of New York Mellon (the "Administrator") will serve as the administrator, custodian, transfer agent and fund accounting agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser (but not the Sub-Adviser) is affiliated with one or more broker-dealers and the Adviser has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or Sub-Adviser become registered broker-dealers or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Securities and Exchange Commission ("Commission") has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 69591 (May 16, 2013), 78 FR 30372 (May 22, 2013) (SR–NYSEArca–2013–33) (order approving Exchange listing and trading of International Bear ETF); 69061 (March 7, 2013), 78 FR 15990 (March 13, 2013) (SR–NYSEArca–2013–01) (order approving Exchange listing and trading of Newfleet Multi-Sector Income ETF). The Commission has approved for Exchange listing and trading shares of two actively managed funds of the PIMCO ETF Trust that principally hold municipal bonds. *See* Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of shares of the PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund). The Commission also has approved listing and trading on the Exchange of shares of the SPDR Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Equities Rule 5.2(j)(3). *See* Securities Exchange Act Release No.63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120).

[6] The Trust is registered under the 1940 Act. On May 20, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act"), and under the 1940 Act relating to the Fund (File Nos. 333–187668 and 811–22819) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30607 (July 23, 2013) (File No. 812–14080) ("Exemptive Order").

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Description of the Fund

Principal Investments

According to the Registration Statement, the Fund will seek to provide a competitive level of current income exempt from federal income tax, while preserving capital. The Fund, under normal market conditions,[8] will invest at least eighty percent (80%) of the Fund's net assets in debt securities whose interest is, in the opinion of bond counsel for the issuer at the time of issuance, exempt from U.S. federal income tax ("Municipal Bonds"). The Sub-Adviser will invest the Fund's assets using a barbell strategy, which means that the Sub-Adviser will overweight the Fund's investments in Municipal Bonds with maturities on the short and long ends of the fixed income yield curve, while underweighting exposure to Municipal Bonds with intermediate maturities.

According to the Registration Statement, Municipal Bonds in which the Fund may invest include one or more of the following:

- General obligation bonds, which are typically backed by the full faith, credit, and taxing power of the issuer;
- revenue bonds, which are typically secured by revenues generated by the issuer;
- discount bonds, which may be originally issued at a discount to par value or sold at market price below par value;
- premium bonds, which are sold at a premium to par value;
- zero coupon bonds, which are issued at an original issue discount, with the full value, including accrued interest, paid at maturity; and
- private activity bonds, which are typically issued by or on behalf of local or state government for the purpose of financing the project of a private user.

The Fund will have no target duration for its investment portfolio, and the Sub-Adviser may target a shorter or longer average portfolio duration based on the Sub-Adviser's forecast of interest rates and view of fixed-income markets generally.[9] The Sub-Adviser will generally apply a heavier weight toward Municipal Bonds with shorter maturities during periods of high interest rates and longer maturities during periods of lower interest rates. At least 80% of the weight of the Fund's assets will be in Municipal Bonds with a modified duration of 15 years or less.

With respect to credit quality, under normal market conditions, at least 90% of the Fund's assets invested in Municipal Bonds will be in Municipal Bonds rated "A" or better by at least one major credit rating agency or, if unrated, deemed to be of comparable quality by the Sub-Adviser. From time to time, the Fund may concentrate (*i.e.*, invest more than 25% of its total assets) in particular sectors. The Fund may sell investments for a variety of reasons, such as to adjust the portfolio's average maturity, duration, or overall credit quality, or to shift assets into and out of higher-yielding or lower-yielding securities or certain sectors.

Under normal market conditions, each Municipal Bond held by the Fund must be a constituent of a deal where the deal's original offering amount was at least $100 million. The Fund will hold a minimum of 75 Municipal Bonds. No Municipal Bond held by the Fund will exceed 4% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 10% of the weight of the Fund's portfolio. The Fund will hold Municipal Bonds of a minimum of 30 non-affiliated issuers.[10]

According to the Registration Statement, under normal market conditions, at least 80% of the Fund's income will be exempt from federal income taxes. However, a significant portion of the Fund's income could be derived from securities subject to the alternative minimum tax.

Other Investments

While the Fund, under normal market conditions, will invest at least eighty percent (80%) of its assets in Municipal Bonds, as described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund may invest in equity securities, both directly and indirectly through investment in shares of exchange-traded funds ("ETFs"),[11] other investment companies, and other types of securities and instruments described below. The equity portion of the Fund's portfolio may include common stocks traded on securities exchanges or in the over-the-counter ("OTC") market. In addition to common stocks, the equity portion of the Fund's portfolio may also include exchange-traded and OTC preferred stocks, and exchange-traded and OTC warrants.[12]

The Fund may purchase taxable municipal bonds when the Sub-Adviser believes they offer opportunities for the Fund, or variable rate demand notes (VRDNs) that pay interest monthly or quarterly based on a floating rate that is reset daily or weekly based on an index of short-term municipal rates.

The Fund may invest in exchange-traded and OTC securities convertible into common stock. Such securities are the following: Convertible bonds and convertible preferred stocks.[13]

The Fund may invest directly and indirectly in cash equivalents, namely, money market instruments that are the following: U.S. Government obligations or corporate debt obligations (including those subject to repurchase agreements); banker's acceptances [14] and certificates of deposit [15] of domestic branches of banks, commercial paper,[16] and master notes.[17]

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[8] The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues (*e.g.*, system failure) causing dissemination of inaccurate market information; or force majeure type events such as\ natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] Duration measures the interest rate sensitivity of a debt security by assessing and weighting the present value of the security's payment pattern. Generally, the longer the maturity, the greater the duration and, therefore, the greater effect interest rate changes have on the price of the security.

[10] For purposes of this restriction, each state and each separate political subdivision, agency, authority, or instrumentality of such state, each multi-state agency or authority, and each guarantor, if any, will be treated as separate issuers of Municipal Bonds.

[11] The ETFs in which the Fund may invest will be registered under the 1940 Act and include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such ETFs all will be listed and traded in the U.S. on registered exchanges.

[12] With respect to its exchange-traded equity securities investments, the Fund will normally invest in equity securities that are listed and traded on a U.S. exchange or in markets that are members of the Intermarket Surveillance Group ("ISG") or parties to a comprehensive surveillance sharing agreement with the Exchange. In any case, not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (except for non-exchange-traded investment company securities) will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement. *See* note 29, *infra*.

[13] The criteria in note 12 above also will apply to exchange-traded convertible preferred stocks and exchange-traded stocks into which convertible bonds may be converted.

[14] Banker's acceptances are time drafts drawn on and "accepted" by a bank. When a bank "accepts" such a time draft, it assumes liability for its payment. When the Fund acquires a banker's acceptance, the bank that "accepted" the time draft is liable for payment of interest and principal when due. The banker's acceptance carries the full faith and credit of such bank.

[15] A certificate of deposit is an unsecured, interest bearing debt obligation of a bank.

In order to maintain sufficient liquidity, to implement investment strategies or for temporary defensive purposes, the Fund may invest a significant portion of its assets in shares of one or more money market funds. Generally, money market mutual funds are registered investment companies that seek to earn income consistent with the preservation of capital and maintenance of liquidity by investing primarily in high quality money market instruments.

The Fund may invest in the securities of other non-exchange-traded investment company securities in compliance with Section 12(d)(1)(E), (F) and (G) of the 1940 Act and the rules thereunder.[18]

The Fund may write U.S. exchange-traded call and put options on securities, ETFs or security indexes to seek income or may purchase or write U.S. exchange-traded put or call options for hedging purposes.

The Fund may purchase securities on a when-issued basis or for settlement at a future date (forward commitment) if the Fund holds sufficient liquid assets to meet the purchase price.

Additionally, the Trust, on behalf of the Fund, has claimed an exclusion from the definition of the term "commodity pool operator" pursuant to Rule 4.5 under the Commodity Exchange Act, as amended (the "CEA"). Therefore, the Fund is not subject to regulation or registration as a commodity pool operator under the CEA.

Investment Restrictions

The Fund may, from time to time, take temporary defensive positions that are inconsistent with its principal investment strategies in an attempt to respond to adverse market, economic, political or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash and cash equivalent positions.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[19]

The Fund will seek to qualify for treatment as a regulated investment company under the Internal Revenue Code of 1986.[20]

The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in "Creation Units" on a continuous basis through the Distributor, at their net asset value ("NAV") next determined after receipt, on any business day, for an order received in proper form. All orders to create Creation Units must be placed for one or more Creation Unit size aggregations of Shares (50,000 Shares per Creation Unit). The Creation Unit size is subject to change. Cash creations will be the default mechanism for creation of Shares.

However, the Fund will retain the ability to utilize an in-kind mechanism for creation of Shares, upon approval of the Distributor. In such case, the consideration for purchase of a Creation Unit of the Fund generally will consist of an in-kind deposit of "Deposit Securities" for each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and a "Cash Component" computed as described below. Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit", which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.*, the NAV per Creation Unit exceeds the market value of the Deposit Securities), the Cash Component will be such positive amount. If the Cash Component is a negative number (*i.e.*, the NAV per Creation Unit is less than the market value of the Deposit Securities), the Cash Component will be such negative amount, and the creator will be entitled to receive cash from the Fund in an amount equal to the Cash Component. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities.

The Administrator, through the National Securities Clearing Corporation ("NSCC"), will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of Shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit will be applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available.

The identity and number of Shares of the Deposit Securities required for the Fund Deposit for the Fund will change as rebalancing adjustments and corporate action events occur from time to time. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash—*i.e.*, a "cash in lieu" amount—to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery, that may not be eligible for transfer or that may not be eligible for trading by an "Authorized Participant" (as described below) or the investor for which it is acting.

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[16] Commercial paper is an unsecured, short-term debt obligation of a bank, corporation, or other borrower. Commercial paper maturity generally ranges from two to 270 days and is usually sold on a discounted basis rather than as an interest-bearing instrument. The Fund will invest directly in commercial paper only if it is rated in one of the top two rating categories by Moody's, S&P or Fitch or, if not rated, is of equivalent quality in the Adviser's opinion. Commercial paper may include master notes of the same quality. Master notes are unsecured obligations which are redeemable upon demand of the holder and which permit the investment of fluctuating amounts at varying rates of interest.

[17] Master notes may be acquired by the Fund through the master note program of the Fund's custodian bank.

[18] 15 U.S.C. 80a–12(d)(1)(E), (F) and (G).

[19] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[20] 26 U.S.C. 851.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of the Fund Deposit, the Administrator, through NSCC, also will make available on each business day the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of the Fund.

Procedures for Creation of Creation Units

To be eligible to place orders to create a Creation Unit of the Fund, an entity must be (i) a "Participating Party", *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of NSCC (the "Clearing Process") or a clearing agency that is registered with the Commission, or (ii) a Depositary Trust Company ("DTC") Participant and, in each case, must have executed an agreement with the Trust, the Distributor and the Administrator with respect to creations and redemptions of Creation Units ("Participant Agreement"). A Participating Party and DTC Participant are collectively referred to as an "Authorized Participant".

All orders to create Creation Units must be received by the Distributor no later than the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time), in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and the Fund through the Administrator and only on a business day. Cash redemptions will be the default mechanism for redemptions of Shares.

However, the Fund will retain the ability to utilize an in-kind mechanism for redemption of Shares, upon approval of the Distributor. In such case, the redemption proceeds for a Creation Unit generally consist of Deposit Securities, as announced by the Administrator on the business day of the request for redemption received in proper form, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Deposit Securities (the "Cash Redemption Amount"), less a redemption transaction fee. In the event that the Deposit Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder.

With respect to the Fund, the Administrator, through NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the Deposit Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Deposit Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units.

If it is not possible to effect deliveries of the Deposit Securities, the Trust may in its discretion exercise its option to redeem such shares in cash, and the redeeming beneficial owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit.[21] In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions, to offset the Trust's brokerage and other transaction costs associated with the disposition of Deposit Securities).

The right of redemption may be suspended or the date of payment postponed with respect to the Fund (1) for any period during which the Exchange is closed (other than customary weekend and holiday closings); (2) for any period during which trading on the Exchange is suspended or restricted; (3) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Shares' NAV is not reasonably practicable; or (4) in such other circumstance as is permitted by the Commission.

Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fee, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each day that the Exchange is open. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

The pricing and valuation of portfolio securities will be determined in good faith in accordance with procedures approved by, and under the direction of, the Trust's Board of Trustees ("Board"). In determining the value of the Fund's assets, equity securities will be generally valued at market using quotations from the primary market in which they are traded. Debt securities (other than short-term investments) will be valued on the basis of broker quotes or valuations provided by a pricing service, which in determining value will utilize information regarding recent sales, market transactions in comparable securities, quotations from dealers, and various relationships between securities. Other assets, such as accrued interest, accrued dividends and cash also will be included in determining the NAV. The Fund normally will use third party pricing services to obtain portfolio security prices.

Municipal Bonds, money market instruments, convertible bonds, taxable municipal bonds, and VRDNs will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in fixed-income instruments in the respective market.

Exchange-traded equity securities, including common stocks, ETFs, preferred stocks, convertible preferred stocks and warrants, will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded. If market prices are unavailable or the Fund believes that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Trust's Board.

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[21] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

Equity securities traded in the OTC market, including common stocks, preferred stocks, and warrants, will be valued at the last reported sale price on the valuation date. OTC traded convertible preferred stocks will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Securities of non-exchange-traded investment company securities registered under the 1940 Act, including money market funds, will be valued at NAV.

Option contracts will be valued at their most recent sale price on the applicable exchange. If no such sales are reported, these contracts will be valued at their most recent bid price.

To the extent the assets of the Fund are invested in other open-end investment companies that are registered under the 1940 Act, the Fund's NAV will be calculated based upon the NAVs reported by such registered open-end investment companies.

Securities and assets for which market quotations are not readily available or which cannot be accurately valued using the Fund's normal pricing procedures will be valued by the Trust's Fair Value Pricing Committee at fair value as determined in good faith under policies approved by the Board. Fair value pricing may be used, for example, in situations where (i) portfolio securities, such as securities with small capitalizations, are so thinly traded that there have been no transactions for that security over an extended period of time; (ii) an event occurs after the close of the exchange on which a portfolio security is principally traded that is likely to change the value of the portfolio security prior to the Fund's NAV calculation; (iii) the exchange on which the portfolio security is principally traded closes early; or (iv) trading of the particular portfolio security is halted during the day and does not resume prior to the Fund's NAV calculation. The Board will monitor and evaluate the Fund's use of fair value pricing, and periodically reviews the results of any fair valuation under the Trust's policies.

Availability of Information

The Fund's Web site (*www.cumberetfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[22] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund's Web site will disclose the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[23]

The Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. The NAV of Shares of the Fund will normally be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each business day. Authorized Participants may refer to the basket composition file for information regarding securities and financial instruments that may comprise the Fund's basket on a given day.

The approximate value of the Fund's investments on a per-Share basis, the Indicative Intra-Day Value ("IIV"), will be disseminated every 15 seconds during the Exchange Core Trading Session. The IIV should not be viewed as a "real-time" update of NAV because the IIV will be calculated by an independent third party and may not be calculated in the exact same manner as NAV, which will be computed daily.

The IIV for the Fund will be calculated by dividing the "Estimated Fund Value" as of the time of the calculation by the total number of outstanding Shares. "Estimated Fund Value" is the sum of the estimated amount of cash held in the Fund's portfolio, the estimated amount of accrued interest owing to the Fund and the estimated value of the securities held in the Fund's portfolio, minus the estimated amount of the Fund's liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Fund's Web site. In determining the estimated value for each of the component securities, the IIV will use last sale, market prices or other methods that would be considered appropriate for pricing securities held by registered investment companies.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's shareholder reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the Consolidated Tape Association ("CTA") high-speed line, and from the national securities exchange on which they are listed. Price information regarding non-U.S. exchange-traded equity securities held by the Fund will be available from the exchanges trading such assets.

Quotation information from brokers and dealers or pricing services will be available for Municipal Bonds, taxable municipal bonds, convertible bonds, OTC traded convertible preferred stocks, corporate debt obligations, VRDNs, and cash equivalents. Price information for investment company securities (other than ETFs) will be available from the applicable investment company's Web site and from market data vendors. Intra-day and closing price information for OTC equity securities will be available from major market data vendors. Pricing information regarding each asset class in which the Fund will invest will generally be available through nationally recognized data service providers through subscription agreements. Quotation and last sale information for exchange-traded options will be available via the Options Price Reporting Authority and from the applicable U.S. options exchange. In addition, the IIV, (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[24] The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

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[22] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[23] Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[25] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [26] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio [27] as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[28]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.[29]

FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, options and certain exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, options and certain exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, options and certain exchange-traded equity securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). FINRA also can access data obtained from the Municipal Securities Rulemaking Board ("MSRB") relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

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[24] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

[25] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[26] 17 CFR 240.10A–3.

[27] The term "Disclosed Portfolio" is defined in NYSE Arca Equities Rule 8.600(c)(2).

[28] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[29] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., Eastern Time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[30] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, options and certain exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, options and certain exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, options and certain exchange-traded equity securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Fund may not purchase or hold illiquid assets if, in the aggregate, more than 15% of its net assets would be invested in illiquid assets. The Adviser and Sub-Adviser are not registered as broker-dealers but the Adviser is affiliated with one or more broker-dealers and has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Fund's investments in Municipal Bonds will be well-diversified in that, under normal market conditions, the Fund will hold a minimum of 75 Municipal Bonds; no Municipal Bond held by the Fund will exceed 4% of the weight of the Fund's portfolio; no single Municipal Bond issuer will account for more than 10% of the weight of the Fund's portfolio; and the Fund will hold Municipal Bonds of a minimum of 30 non-affiliated issuers. In addition, each Municipal Bond held by the Fund must be a constituent of a deal where the deal's original offering amount was at least $100 million.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the CTA high-speed line, and from the national securities exchange on which they are listed. The Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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[30] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–107. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–107 and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19325 Filed 8–12–16; 8:45 am]

BILLING CODE 8011–01–P

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[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78519; File No. SR–MIAX–2016–21]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

August 9, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing*, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its current MIAX Market Maker[3] Sliding Scale for transaction fees to: (i) Modify the current Market Maker Sliding Scale table of Market Maker Transaction Fees in Section 1)a)i) of the Fee Schedule, as described more fully below; and (ii) adopt a "maker" fee and a "taker" fee for the various Tiers in the Market Maker Sliding Scale, as described below.

The Market Maker Sliding Scale for Transaction Fees reduces a Market Maker's per contract transaction fee based on the Market Maker's percentage of total national Market Maker volume of any options classes that trade on the Exchange during the calendar month, currently based on the following scale:

Tier	Percentage of national market maker volume	Per contract fee for penny classes	Per contract fee for non-penny classes
1	0.00%–0.05%	$0.25	$0.29
2	Above 0.05%–0.50%	0.19	0.23
3	Above 0.50%–1.00%	0.12	0.16
4	Above 1.00%–1.50%	0.07	0.11
5	Above 1.50%	0.05	0.09

The Market Maker Sliding Scale applies to all Market Makers for transactions in all products except mini-options, with different per-contract transaction fees established for Penny option classes and non-Penny option classes. A Market Maker's initial $0.25 per contract rate in Penny classes and $0.29 per contract in non-Penny classes is reduced when the Market Maker reaches the volume thresholds set forth in the Market Maker Sliding Scale in a month. As a Market Maker's monthly volume increases, its per contract transaction fee decreases when the monthly volume thresholds described in the Market Maker Sliding Scale are achieved.

The Exchange proposes to amend the Fee Schedule by deleting the current Market Maker Sliding Scale table, and to create two new tables based upon volume thresholds in the Priority Customer Rebate Program[4] applicable to Members and their Affiliates (as defined below). One of the new tables will apply to Members and their Affiliates[5] that are included in Priority Customer Rebate Program Volume Tier 3 or higher, and the other new table will apply to Members and their Affiliates that are not included in Priority Customer Rebate Program Volume Tier 3 or higher. Currently, the Fee Schedule provides discounted transaction fees for Members and their qualified Affiliates that achieve certain volume thresholds through the submission of Priority Customer Orders[6] under the Exchange's Priority Customer Rebate Program.[7] The current Fee Schedule describes the discounted fees in narrative text and footnotes to the table. The Exchange is proposing to delete this narrative text and parts of the footnotes to simply include the discounted transaction fees in the two new tables. The Market Maker sliding scale will continue to apply to MIAX Market Maker transaction fees in all products except mini-options. MIAX Market Makers will continue to be assessed a $0.02 per executed contract fee for transactions in mini-options. The purpose of basing the proposed two new tables on the volume thresholds in the Priority Customer Rebate Program is to clarify that the Exchange provides incentives for Members and their Affiliates to submit a greater number of Priority Customer Orders to the Exchange. The Exchange is simply deleting this information from the narrative text in the Fee Schedule and conveying it more simply and clearly in table format. The proposed language "or higher," which replaces "or 4," is intended to account for potential additional tiers in the Priority Customer Rebate Program that may be added in the future.

The Exchange also proposes to establish new percentage thresholds of national customer volume in the current Tiers in the Market Maker Sliding Scale. The new thresholds will be the same in each new table. Specifically, the Exchange proposes to establish new percentage thresholds of national customer volume in the Market Maker Sliding Scale as follows: (i) In Tier 1, from 0–0.0% to 0–0.075%; (ii) in Tier 2, from above 0.075% to 0.60%; (iii) in Tier 3, from above 0.60% to 1.00%; (iv) in Tier 4, from above 1.00% to 1.50%; and (v) in Tier 5, above 1.50%. These Tiers will apply to both new tables. The Exchange notes that a number of other exchanges have tiered fee schedules that offer different transaction fee rates depending on the monthly average daily volume (''ADV'') of liquidity providing executions on their facilities.[8]

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[3] The term "Market Maker" means any MIAX Market Maker including Registered Market Makers ("RMMs"), Primary Lead Market Makers ("PLMMs"), Lead Market Makers ("LMMs"), Directed Order Lead Market Makers ("DLMMs") and Directed Primary Lead Market Makers ("DPLMMs"). *See* Exchange Rule 100. *See also* Fee Schedule, Footnote 1.

[4] MIAX credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding QCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. *See* Fee Schedule, Section 1)a)iii).

[5] For purposes of the MIAX Options Fee Schedule, the term "Affiliate" means an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A ("Affiliate"). *See* proposed new Footnote 1 to the Fee Schedule.

[6] The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A "Priority Customer Order" means an order for the account of a Priority Customer. *See* Exchange Rule 100.

[7] The Exchange will aggregate the trading activity of separate MIAX Market Maker firms for purposes of the sliding scale if there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. Any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for Priority Customer Rebate Program volume tiers 3 or 4 will be assessed $0.23 per contract for tier 1, $0.17 per contract for tier 2, $0.10 per contract for tier 3, $0.05 per contract for tier 4, and $0.03 per contract for tier 5 for transactions in standard options in Penny Pilot Classes. Any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for Priority Customer Rebate Program volume tiers 3 or 4 will be assessed $0.27 per contract for tier 1, $0.21 per contract for tier 2, $0.14 per contract for tier 3, $0.09 per contract for tier 4, and $0.07 per contract for tier 5 for transactions in standard options in non-Penny Pilot classes. *See* Fee Schedule Section 1)a)i).

The new tables will continue to list separate per contract transaction fees for Penny classes and non-Penny classes. The new tables will also establish, and the Exchange will assess, different fees to MIAX Market Makers that are ''makers'' and Market Makers that are ''takers'' in Penny and non-Penny classes. Market Makers that place resting liquidity, *i.e.*, quotes or orders on the MIAX System,[9] will be assessed the ''maker'' fees described in the new tables. MIAX Market Makers that execute against resting liquidity will be assessed a different, higher ''taker'' fee. This is distinguished from traditional ''maker-taker'' models where ''makers'' typically receive a rebate and ''takers'' do not; the Exchange is not proposing a rebate but instead is simply proposing to assess lower transaction fees to ''makers'' as compared to ''takers.'' It is, however, similar to the manner in which other exchanges assess fees for resting market maker liquidity.[10]

The revised Market Maker Sliding Scale proposed by the Exchange will be as follows:

MEMBERS AND THEIR AFFILIATES IN PRIORITY CUSTOMER REBATE PROGRAM VOLUME TIER 3 OR HIGHER

	Tier	Percentage thresholds	Per contract fee for penny classes		Per contract fee for non-penny classes	
			Maker	Taker	Maker	Taker
All MIAX Market Makers.	1	0.00%–0.075%	$0.21	$0.23	$0.25	$0.30
	2	Above 0.075%–0.60%	0.15	0.22	0.19	0.27
	3	Above 0.60%–1.00%	0.08	0.15	0.12	0.20
	4	Above 1.00%–1.50%	0.04	0.06	0.08	0.12
	5	Above 1.50%	0.02	0.04	0.06	0.10

MEMBERS AND THEIR AFFILIATES NOT IN PRIORITY CUSTOMER REBATE PROGRAM VOLUME TIER 3 OR HIGHER

	Tier	Percentage thresholds	Per contract fee for penny classes		Per contract fee for non-penny classes	
			Maker	Taker	Maker	Taker
All MIAX Market Makers[11].	1	0.00%–0.075%	$0.23	$0.25	$0.27	$0.32
	2	Above 0.075%–0.60%	0.17	0.24	0.21	0.29
	3	Above 0.60%–1.00%	0.10	0.17	0.14	0.22
	4	Above 1.00%–1.50%	0.06	0.08	0.10	0.14
	5	Above 1.50%	0.04	0.06	0.08	0.12

The Exchange further proposes that the lower per contract ''maker'' fee for both Penny pilot classes and non-Penny pilot classes will apply to opening transactions, transactions resulting from quotes that uncross the Away Best Bid or Offer (''ABBO'') and to any other transaction that is not a taker transaction.

For clarity and ease of reference, the Exchange is proposing to define the term ''Affiliate'' in the Fee Schedule as an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A (''Affiliate''). This definition will be included in proposed new Footnote 1 to the Fee Schedule, and the term ''Affiliate'' will be used in subsequent text and footnotes in the Fee Schedule for brevity, clarity and ease of reference. The Exchange believes this simplifies and streamlines these sections of the Fee Schedule.

The Exchange believes the proposed changes to the Market Maker Sliding Scale are objective because the proposed transaction fees are based on the achievement of stated volume thresholds, and on rewarding Market Makers that provide liquidity on the Exchange with the reduced ''maker'' transaction fees. The specific volume thresholds of the tiers were set based upon business determinations and an analysis of current volume levels. The specific volume thresholds and rates were set in order to encourage MIAX Market Makers to reach for higher tiers. The Exchange believes that the proposed changes to the tiered fee schedule will cause Market Makers to display their quotes and orders on the Exchange, to improve the price and size of such quotes and orders, and thus increase the volume of contracts traded on the Exchange.

As stated above, the Exchange does not propose a change in the corresponding fees for mini options. The proposed rule change is scheduled to become operative August 1, 2016.

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[8] *See* Chicago Board Options Exchange, Incorporated (''CBOE'') Fee Schedule, p. 3; *see also* NASDAQ Options Market (''NOM'') Fees and Rebates, Chapter XV, Section 2.

[9] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[10] The Exchange notes that maker-taker pricing has been adopted on at least one other exchange for certain classes of options. *See, e.g.*, ISE Schedule of Fees, Section I. The Exchange's proposed maker fees are similar in that resting ISE liquidity from makers is charged lower fees than the fees for takers. ISE's maker-taker fees are distinguished from the proposed MIAX maker-taker fees because the ISE maker-taker fee applies to ISE market maker orders sent to ISE by ISE Electronic Access Members, whereas the current Exchange proposal affords lower maker fees for resting quotes and orders submitted by Market Makers. Despite this distinction, the result is that MIAX will charge a lower fee for resting Market Maker liquidity, as ISE does today.

[11] *See* MIAX Rule 100 for the definition of Registered Market Maker (''RMM''), Primary Lead Market Maker (''PLMM'') and Lead Market Maker (''LMM''). Directed Order Lead Market Maker (''DLMM'') and Directed Primary Lead Market Maker (''DPLMM'') are each a party to a transaction being allocated to the LMM or PLMM and are each the result of an order that has been directed to the LMM or PLMM.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act,[13] in that it is an equitable allocation of reasonable fees and other charges among Exchange members, and issuers and other persons using its facilities, and 6(b)(5) of the Act,[14] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed fee structure is equitable and not unfairly discriminatory because all similarly situated MIAX Market Makers are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly discriminatory.

Volume-based pricing models such as those currently maintained and proposed on the Exchange have been widely adopted by options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value of an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

The Exchange's proposal to offer a reduced fee to Market Makers that provide liquidity in Penny and non-Penny options is also equitable and not unfairly discriminatory under the Act. While distinguished from the traditional "maker-taker" fee model under which an exchange pays a per-share rebate to their members to encourage them to place resting liquidity-providing quotes and orders on their trading systems, the instant proposal reflects a substantially similar fee structure that provides a reduced fee for "makers." If an execution occurs, rather than giving the liquidity providing "maker" a rebate and assessing the "taker" that executes against that resting order a fee, the Exchange is simply proposing a reduced fee for "makers" as compared to "takers."

The Exchange believes that the proposed maker-taker model is an important competitive tool for exchanges and directly or indirectly can provide better prices for investors. The proposed fee structure may narrow the MIAX Bid and Offer ("MBBO") because the reduced fee for "makers" effectively subsidizes, and thus encourages, the posting of liquidity. The Exchange believes that the reduced "maker" fees will also provide MIAX Market Makers with greater incentive to either match or improve upon the best price displayed on MIAX, all to the benefit of investors and the public in the form of improved execution prices.

The use of volume-based incentives has long been accepted as an equitable and not unfairly discriminatory pricing practice employed at multiple competing options exchanges. In fact, the specific volume-based incentives proposed here, a reduced fee for providing greater amounts of liquidity in Penny and non-Penny options (*i.e.*, in the Priority Customer Rebate Program), is currently employed by other exchanges and it has been accepted as equitable and not unfairly discriminatory under the Act.[15] The discounted fees for Members and their Affiliates that achieve the Tier 3 volume threshold or higher are equitable, reasonable and not unfairly discriminatory because they provide incentive for Members and their Affiliates to submit more orders to the Exchange, thus enhancing liquidity and removing impediments to and perfecting the mechanisms of a free and open market and a national market system. The proposed reduced maker fee is equitable and not unfairly discriminatory because it benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the quality and efficiency of the MIAX marketplace. The market participants that post liquidity to the Book, thereby contributing to price discovery and size discovery while taking the risk of not receiving an execution by posting passive liquidity are justly rewarded with a lower transaction fee.

The Exchange's proposal to charge Market Makers who remove liquidity a higher fee is equitable and not unfairly discriminatory and follows a similar line of reasoning. It is common practice among options exchanges to differentiate between fees for adding liquidity and fees for removing liquidity, and such differentiation has been accepted as not unfairly discriminatory under the Act.[16] The Exchange believes that the differentiation in pricing between "makers" and "takers" is appropriate, because "takers" remove liquidity and benefit disproportionately from their executions compared to "makers," without assuming the obligations that "makers" assume in making continuous, two-sided markets, and without engaging in competitive price discovery and improvement in the same manner as "makers." Liquidity removers benefit from the price and size discovery function that liquidity providers have performed in posting their quotations and orders, and when executing against resting liquidity a "taker" is not taking the risk of an order or quote sitting unexecuted on the Book. The Exchange believes for these reasons that a "taker" fee that is higher than a "maker" fee or rebate is equitable, reasonable and not unfairly discriminatory, and thus consistent with the Act.

The lower fees charged for providing liquidity have been considered beneficial in that attracting this liquidity benefits all market participants by improving the overall quality of trading on the Exchange. The level of differentiation between the "maker" fee and the "taker" fee is also within the bounds of what has been accepted as not unfairly discriminatory under the Act. Finally, the proposed fees will be imposed equally among all participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed "maker-taker" model is an important competitive tool for the Exchange and directly or indirectly can provide better prices for investors. The proposed fee structure is intended to promote narrower spreads and greater liquidity at the best prices. The fee-based incentives for market participants to submit liquidity providing orders and quotes to the Exchange, and thereafter to improve the MBBO to ensure participation, should enable the Exchange to attract, and compete for, order flow with other exchanges.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to provide liquidity and to send order flow to the Exchange.

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[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(1) and (b)(5).

[15] *See, supra* note 8. *See* also, NOM Fees and Rebates, Chapter XV, Section 2, and BATS BZX Exchange Fee Schedule (providing rebates for adding liquidity and charging fees for removing liquidity in securities at or above $1.00).

[16] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[17] and Rule 19b–4(f)(2)[18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2016–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2016–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2016–21, and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19321 Filed 8–12–16; 8:45 am]

BILLING CODE 8011–01–P

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[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, August 17, 2016 at 2:00 p.m., in the Auditorium (L–002) at the Commission's headquarters building, to hear oral argument in an appeal from an initial decision of an administrative law judge by respondent Larry C. Grossman.

On December 23, 2014, the ALJ found that Grossman, the former principal of a registered investment adviser, violated certain antifraud, broker-dealer, and investment adviser provisions of the federal securities laws by, among other things, making misrepresentations and omissions of material fact to his advisory clients when he advised them to invest in funds as to which he had an economic conflict of interest. For these violations, the ALJ ordered Grossman to pay a $1.55 million civil penalty, to pay approximately $3 million in disgorgement plus prejudgment interest, and to cease and desist from further violations of the securities laws. The ALJ also barred him from association with the securities industry.

Respondent appealed, challenging only the imposition of sanctions. The issues likely to be considered at oral argument include, among other things, whether the five year statute of limitations in 28 U.S.C. 2462 prohibits us from imposing a civil penalty, disgorgement, industry bar, or cease-and-desist order, and, to the extent that it does not, what sanctions, if any, are appropriate in the public interest.

For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: August 10, 2016.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2016–19455 Filed 8–11–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78510; File No. SR–IEX–2016–11]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 11.190(g) Related to Discretionary Peg Orders

August 9, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 4, 2016, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[4] and Rule 19b–4 thereunder,[5] Investors Exchange LLC ("IEX" or "Exchange") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend Rule 11.190(g) to optimize and enhance the effectiveness of the quote instability calculation in determining whether a crumbling quote exists, to: (i) Provide that the quote instability calculation would not include IEX protected quotations; (ii) reduce the time period that a crumbling quote condition remains in effect from ten to two milliseconds; (iii) add two new quote stability variables, together with their respective coefficients; and (iv) modify the quote instability coefficients and quote instability threshold included in the quote instability calculation, pursuant to subparagraph (1)(D)(iii) thereof. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.[6]

The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement [sic] may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Overview

The purpose of the proposed rule change is to amend Rule 11.190(g) to modify the quote instability coefficients and quote instability threshold included in the quote instability calculation specified in subparagraph (g)(1) for purposes of determining whether a crumbling quote exists. When the Exchange determines that a crumbling quote exists in a particular security for Protected Quotations from the national best bid ("Protected NBB"), Discretionary Peg buy orders are restricted from exercising price discretion to trade against interest above the NBB. Similarly, when the Exchange determines that a crumbling quote exists in a particular security for Protected Quotations from the national best offer ("Protected NBO"), Discretionary Peg sell orders are restricted from exercising price discretion to trade against interest below the NBO.

Discretionary Peg Order

The manner in which Discretionary Peg orders operate is described in Rule 11.190(b)(10). Specifically, a Discretionary Peg order is a non-displayed, pegged order that upon entry into the System, the price of the order is automatically adjusted by the System to be equal to the less aggressive of the Midpoint Price or the order's limit price, if any. When unexecuted shares of such order are posted to the Order Book, the price of the order is automatically adjusted by the System to be equal to and ranked at the less aggressive of the primary quote or the order's limit price and is automatically adjusted by the System in response to changes in the NBB (NBO) for buy (sell) orders up (down) to the order's limit price, if any. In order to meet the limit price of active orders on the Order Book, a Discretionary Peg order will exercise the least amount of price discretion necessary from the Discretionary Peg order's resting price to its discretionary price (defined as the less aggressive of the Midpoint Price or the Discretionary Peg order's limit price, if any), except during periods of quote instability (*i.e.*, when a crumbling quote exists) as defined in paragraph Rule 11.190(g).

In determining whether a crumbling quote exists, the Exchange utilizes real time relative quoting activity of Protected Quotations and a proprietary mathematical calculation (the "quote instability calculation") to assess the probability of an imminent change to the current Protected NBB to a lower price or Protected NBO to a higher price for a particular security ("quote instability factor"). When the quoting activity meets predefined criteria and the quote instability factor calculated is greater than the Exchange's defined threshold ("quote instability threshold"), the System treats the quote as not stable ("quote instability" or a "crumbling quote"). During all other times, the quote is considered stable ("quote stability"). The System independently assesses the stability of the Protected NBB and Protected NBO for each security.

When the System determines that a quote, either the Protected NBB or the Protected NBO, is unstable, the determination remains in effect at that price level for ten (10) milliseconds. The System will only treat one side of the Protected NBBO as unstable in a particular security at any given time.[7] By not permitting resting Discretionary Peg orders to execute at a price that is more aggressive than the near-side protected NBB or NBO (as applicable) during periods of quote instability, the Exchange System is intended to attempt to protect such orders from unfavorable executions when the market is moving against them. Once the market has moved and the Exchange System deems the near-side Protected NBB or NBO (as applicable) to be stable (pursuant to a pre-determined, objective set of conditions as described below), Discretionary Peg orders are permitted to exercise discretion up to (for buy orders) or down to (for sell orders) the midpoint of the NBBO in order to meet the limit price of active orders on the order book and thereby potentially provide price improvement to such active orders.

Quote stability or instability (also referred to as a crumbling quote) is an assessment that the Exchange System makes on a real-time basis, based on a pre-determined, objective set of conditions specified in Rule 11.190(g)(1). Specifically, quote instability, or the presence of a crumbling quote, is determined by the System when the following factors occur:

(A) The Protected NBB and Protected NBO are the same as the Protected NBB and Protected NBO one (1) millisecond ago; and

(B) the Protected NBBO spread is less than or equal to the thirty (30) day median Protected NBBO spread during the Regular Market Session; and

(C) there are more Protected Quotations on the far side, *i.e.*, more Protected Quotations on the Protected NBO than the Protected NBB for buy orders, or more Protected Quotations on the Protected NBB than the Protected NBO for sell orders; and

(D) the quote instability factor result from the quote stability calculation is greater than the defined quote instability threshold.

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[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] *See*, Rule 11.190(g).

(i) Quote Instability Factor. The Exchange's proprietary quote stability calculation used to determine the current quote instability factor is defined by the following formula that utilizes the quote stability coefficients and quote stability variables defined below:

$$1/\left(1 + e \wedge -(C_0 + C_1 * N + C_2 * F + C_3 * N_{-1} + C_4 * F_{-1})\right)$$

(a) Quote Stability Coefficients. The Exchange utilizes the values below for the quote stability coefficients.

(1) $C_0 = -2.39515$
(2) $C_1 = -0.76504$
(3) $C_2 = 0.07599$
(4) $C_3 = 0.38374$
(5) $C_4 = 0.14466$

(b) Quote Stability Variables. The Exchange utilizes the quote stability variables defined below to calculate the current quote instability factor.

1. N = the number of Protected Quotations on the near side of the market, *i.e.*, Protected NBB for buy orders and Protected NBO for sell orders.
2. F = the number of Protected Quotations on the far side of the market, *i.e.*, Protected NBO for buy orders and Protected NBB for sell orders.
3. N_{-1} = the number of Protected Quotations on the near side of the market one (1) millisecond ago.
4. F_{-1} = the number of Protected Quotations on the far side of the market one (1) millisecond ago.

(ii) Quote Instability Threshold. The Exchange utilizes a quote instability threshold of 0.32.

Rule 11.190(g)(1)(D)(iii) provides that the Exchange reserves the right to modify the quote instability coefficients or quote instability threshold at any time, subject to a filing of a proposed rule change with the SEC. The Exchange is proposing such changes in this rule filing.

Changes to Quote Instability Coefficients and Quote Instability Threshold

The alternative trading system ("ATS") operated by the Exchange's affiliate, IEX Services LLC ("IEX ATS") offers a Discretionary Peg order type that is identical to the Exchange's Discretionary Peg order type, including the factors for determining when a crumbling quote (or quote instability) is present. IEX conducted an analysis of the effectiveness of the existing factors in predicting whether a crumbling quote would occur, by reviewing randomly selected market data from March through June 2016. The results of the analysis were verified by reviewing randomly selected market data from July 2016. Based on this analysis, the Exchange has determined that further optimization of the existing factors would incrementally increase the accuracy of the formula in predicting whether a crumbling quote will occur. The following describes the proposed changes:

1. Rule 11.190(g) states that the Exchange utilizes real time relative quoting activity of Protected Quotations in the quote instability calculation. As proposed, the quote instability calculation would not include IEX protected quotations. The quote instability calculation has been optimized, subject to further proposed enhancements, based on actual market data from trading on the IEX ATS prior to the launch of the Exchange with a protected quotation. Accordingly, IEX does not have data that includes IEX protected quotations to consider in optimization of the quote instability calculation at this time.[8]

2. The Exchange also proposes to reduce the time period that a crumbling quote condition remains in effect from ten to two milliseconds. Based on the market data analysis, IEX found that generally in the instances in which the formula correctly predicted a crumbling quote, the crumbling quote occurred within two milliseconds. By reducing the time period that the crumbling quote condition remains on, IEX believes that it will ameliorate the potential impact of any false positives, because the condition will remain on for a shorter period of time.

3. The Exchange proposes to add two new quote stability variables, "E" and "D", and their coefficients to the quote instability factor calculation specified in subparagraph (g)(1)(D)(i) of Rule 11.190. Quote stability variable E is a Boolean indicator that equals 1 if and only if the last two received quotation updates received by IEX have been quotations of protected markets moving away from the near side of the market on the same side of the market (*i.e.*, bids moving lower or offers moving higher). Based on the market data analysis, the Exchange believes that inclusion of quote stability variable E will help to make the quote instability calculation more accurate in predicting a crumbling quote. Quote stability variable D is a measure of whether the quotation updates received by IEX from the Nasdaq Stock Market, EDGX Exchange or BATS BZX Exchange have been quotations moving away from the near side of the market on the same side of the market (*i.e.*, bids moving lower or offers moving higher) in the last one (1) millisecond. The value will be either 0, 1, 2 or 3 depending on how many of such exchanges (if any) meet the quote stability variable D measure. Based on the market data analysis, the Exchange believes that when these three exchanges move away from the near side of the market on the same side of the market, it is more likely that the quote will crumble, and that inclusion of quote stability variable D will help to make the quote instability calculation more accurate in predicting a crumbling quote.

4. The Quote Stability Coefficients specified in subparagraph (1)(D)(i) of Rule 11.190(g) are proposed to be modified to take into account the recent market data analysis, as well as to add new quote stability variables E and D. The Exchange believes that the modifications, as proposed, will increase the accuracy of the quote instability calculation.

5. The Exchange proposes to modify and re-optimize the Quote Instability Threshold specified in subparagraph (1)(D)(ii) of Rule 11.190(g) based on the recent market data analysis and the two new quote stability variables. The Exchange believes that the modifications, as proposed, will increase the accuracy of the quote instability calculation.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b)[9] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, and as discussed above, the proposal is designed to optimize and enhance the effectiveness of the quote instability calculation in determining whether a crumbling quote exists. The Exchange believes that the proposed changes are designed to protect investors and the public interest by enhancing the accuracy of the Exchange's quote instability calculation in determining whether a crumbling quote exists thereby preventing Discretionary Peg orders from trading at prices more aggressive than the near side of the market (NBB for buy orders, NBO for sell orders) to protect such orders from unfavorable executions when the market appears to be moving against them. The Exchange believes that not including IEX protected quotations in the quote instability calculation is consistent with the protection of investors and the public interest because the calculation is optimized based on actual market data, and IEX does not yet have actual market data that includes IEX protected quotations to consider in optimization of the quote instability calculation at this time. The Exchange also believes that it is consistent with the protection of investors and the public interest to reduce the time period that a crumbling quote condition remains in effect from ten to two milliseconds to ameliorate the potential impact of any false positives. Further, IEX believes that adding the two new quote stability variables, as well as the proposed additions to and modification of the quote instability coefficients and quote instability threshold, as contemplated by 11.190(g)(1)(D)(iii), is consistent with the public interest and the protection of investors because these changes are designed to increase the accuracy of the calculation.

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[8] IEX may consider further enhancements that include IEX's protected quotation, subject to IEX submitting a proposed rule change under Section 19(b) of the Act.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

As proposed, the new quote instability calculation will continue to be a fixed formula specified transparently in IEX's rules. The Exchange is not proposing to add any new functionality, but merely to revise the fixed formula based on market data analysis designed to increase the accuracy of the formula in predicting a crumbling quote, and as contemplated by the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change will apply equally to all IEX Members. The Commission has already considered the Exchange's Discretionary Peg order type in connection with its grant of IEX's application for registration as a national securities exchange under Sections 6 and 19 of the Act.[11] The proposed rule change is designed to merely enhance the accuracy of the quote instability calculation specified in Rule 11.190(g) and ameliorate the impact of any false positives; therefore, no new burdens are being proposed.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6)[13] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, and stated that the proposed rule change will merely revise the fixed formula specified in Rule 11.190(g) for predicting a crumbling quote, as contemplated by the rule. The Exchange noted that the proposed rule change is designed to enhance the accuracy of the quote instability calculation and protect Members that enter Discretionary Peg orders from unfavorable executions when the market is moving against such orders. Further, the Exchange stated that waiver of the operative delay will allow the Exchange to implement the proposed rule change to coincide with IEX's launch of exchange operations during a security-by-security phase-in period beginning on August 19, 2016, thus enabling the Exchange to provide the contemplated protections to Members entering Discretionary Peg orders from exchange launch. The Commission notes that the changes proposed by IEX are intended to optimize the quote instability equation contained in the discretionary peg order type rule, and are not intended to materially change the operation of the rule or introduce new functionality. Rather, the Exchange intends the proposed changes to increase the ability of the discretionary peg order type to meet its stated objectives as reflected in the Exchange's rule. Accordingly, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2016–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2016–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2016–11 and should be submitted on or before September 6, 2016.

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[11] *See* Securities Exchange Act Release No. 34–78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10–222).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19315 Filed 8–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78520; File No. SR–DTC–2016–005]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Regarding the Implementation of Functionality To Submit a Cover of Protect on Behalf of Another Participant and the Removal of the Option To Cover of Protect Directly With Agent

August 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2016, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(2) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change by DTC would update its Procedures[4] set forth in the Guide to make changes to certain options within its Participant Subscription Offer Program ("PSOP")[5] and Participant Tender Offer Program ("PTOP") functions.[6] Specifically, DTC proposes to add an option called "Cover of Protect on Behalf of Another Participant" ("CPAP") to both PSOP and PTOP ("PSOP/PTOP") that would allow a Participant to tender subscription rights ("Rights") or Securities through DTC to an agent ("Offer Agent"),[7] on behalf of another Participant that needs to tender such Rights or Securities in order to receive the shares and/or consideration from (i) a subscription rights offering (a "Rights Offer"); or (ii) a cash tender offer or exchange offer (collectively, a "Tender/Exchange Offer") (together with Rights Offer, "Offer"). DTC would also eliminate an option called "Cover of Protect Submitted Directly to Agent" ("CPDA") from PSOP/PTOP that has allowed a Participant to tender Rights or Securities through DTC to be eligible to receive the shares and/or consideration from an Offer, when such Participant submitted its initial acceptance directly to the Offer Agent outside of DTC. In addition, DTC proposes to make ministerial changes to the text of the Guide, as more fully described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change by DTC would update its Procedures set forth in the Guide to make changes to certain options within its PSOP and PTOP functions. Specifically, DTC proposes to add an option called CPAP to PSOP/PTOP that would allow a Participant to tender Rights or Securities through DTC to an Offer Agent, on behalf of another Participant that needs to tender such Rights or Securities in order to receive the shares and/or consideration from (i) a Rights Offer; or (ii) a Tender/Exchange Offer. DTC would also eliminate an option called CPDA from PSOP/PTOP that has allowed a Participant to tender Rights or Securities through DTC to be eligible to receive the shares and/or consideration from an Offer, when such Participant submitted its initial acceptance directly to the Offer Agent outside of DTC. In addition, DTC proposes to make ministerial changes to the text of the Guide, as more fully described below.

(i) Protects and Covers

(a) Protects and Covers Outside of DTC

Subscription Rights Offering

A Rights Offer is the issuance of Rights to each shareholder as of a record date set by the issuer. Rights are issued to each shareholder in proportion to the number of shares it holds, and entitles the shareholder to purchase additional shares at a discount. Rights may be either non-transferable or transferable. Holders are able to trade transferable Rights in the secondary market.

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[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(2).

[4] Capitalized terms not otherwise defined herein have the meaning set forth in the Rules, By-Laws and Organization Certificate of DTC (the "Rules"), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx* and the Reorganizations Service Guide (the "Guide"), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Reorganizations.pdf.*

[5] References in this rule filing to "PSOP" refer to both the PSOP function within the DTC Participant Terminal System ("PTS") interface and the equivalent "Rights Subscription" function within the Participant Browser System ("PBS") interface. PSOP is a function that is used by Participants to submit instructions including oversubscriptions, submit protects, submit cover of protects, submit cover of protects on behalf of another Participant, and submit Rights sell instructions on Rights Subscription events. PTS and PBS are user interfaces for DTC's Settlement and Asset Services functions. PTS is mainframe-based and PBS is web-based with a mainframe back-end. Participants may use either PTS or PBS, as they are functionally equivalent.

[6] References in this rule filing to "PTOP" refer to both the PTOP function within the PTS interface and the equivalent "Voluntary Tenders and Exchanges" function within the PBS interface. PTOP is a function that is used by Participants to submit instructions, submit protects, submit cover of protects, submit cover of protects on behalf of another Participant, and submit withdrawals on various Voluntary Reorganization events.

[7] The Offer Agent is the fiscal agent of the offeror, typically a bank or trust company that is designated to coordinate the process of the Offer.

In order to subscribe to a Rights Offer, an investor or its broker ("Investor") must, prior to the expiration of the Rights Offer, deliver to the Offer Agent: (i) The Rights, (ii) an executed subscription form for such Rights Offer ("Subscription Form") in which it subscribes to the new shares of the Rights Offer, and (iii) the payment due for the purchase of the shares.

Tender Offers and Exchange Offers

A tender offer is a solicitation by an issuer or a third party to purchase a substantial percentage of the issuer's shares for a specified period of time. The tender offer is at a fixed price, usually higher than the current market price, and is usually conditioned on a sufficient number of the issuer's shareholders tendering a fixed number of their shares. An exchange offer is an offer by an issuer to exchange its Securities for other Securities (of that issuer or another).

If an Investor wants to accept a Tender/Exchange Offer, it submits to the Offer Agent: (i) The letter of transmittal for such Tender/Exchange Offer ("Letter of Transmittal") setting forth the terms of the tender or exchange, including information about the quantity of Securities being tendered as well as where and to whom the payment should be made, and (ii) the Securities it is tendering.

Cover of Protect

An Investor may want to accept an Offer but will not have the necessary Rights or Securities, as the case may be, before the expiration date of the Offer. If permitted by the terms of the Offer, the Investor may submit to the Offer Agent the notice of guaranteed delivery for such Offer ("Notice of Guaranteed Delivery") which serves as (i) protection of the Investor's acceptance of the Offer (the "Protect"), and sets forth the number of shares being subscribed to or the amount of Securities being tendered, and (ii) a guarantee that the Rights or Securities (the "Cover") will be delivered to the Offer Agent within the period prescribed by the Offer (the "Protect Period").[8]

Covering Another Investor's Protect

In some cases, an Investor may find that it will not have the necessary Rights or Securities, as the case may be, in time to tender to the Offer Agent before the expiration of the Protect Period. This may occur due to a failed trade or late delivery of such Rights or Securities. If the Investor is unable to deliver the Rights or Securities within the Protect Period, it will have failed to validly tender and will not be eligible to purchase shares under the Rights Offer or to receive the consideration of the Tender/Exchange Offer, respectively. However, another Investor who does hold the Rights or Securities, and typically owes such Rights or Securities to the Investor who submitted the Protect because of a failed trade or late delivery, may submit the Cover to the Offer Agent on behalf of such Investor.

(b) *Protects and Covers Through DTC*

PSOP and PTOP

DTC distributes information to Participants regarding the reorganization activity that it handles. Generally, this information is distributed through PSOP/PTOP, or the Reorganization Inquiry for Participants ("RIPS") function of PTS/PBS. Upon receiving notice of such reorganization activity, Participants may use the PSOP (for Rights Offers) or PTOP (for Tender/Exchange Offers) functions to elect participation in the reorganization event and to place related instructions for DTC to process.

DTC's Automated Subscription Offer Program

As part of its corporate action[9] services, DTC offers the Automated Subscription Offer Program ("ASOP"),[10] through which DTC, as a conduit between Participants and the Offer Agents, processes Rights Offers for Eligible Securities. Each Offer Agent for a Rights Offer that is eligible for processing through ASOP enters into an agreement with DTC specifying, among other things, that the relay of electronic messages by DTC will qualify as the execution and delivery of Subscription Forms or Notices of Guaranteed Delivery by Participants.

ASOP enables Participants to submit subscription instructions using PSOP. Through PSOP, a Participant that wants to subscribe to a Rights Offer transmits its acceptance and acknowledgment of the terms of the Subscription Form, and instructs and authorizes DTC to surrender the Rights and process the corresponding payment to the Offer Agent. In accordance with these electronic instructions, DTC effects book-entry deliveries of the Rights by transferring the Rights from the Participant's Account to a DTC operational account maintained by DTC on behalf of the Offer Agent ("Agent Account") and sending an electronic confirmation to the Offer Agent. DTC debits the Participant's Settlement Account for the amount of the subscription payments and wires the payment to the Offer Agent. When the additional shares are distributed by the Offer Agent, DTC credits the Securities to the Account of the Participant.

If permitted by the terms of the Rights Offer, if a Participant will not have the Rights before the expiration date of the Rights Offer, it may submit a Protect to the Offer Agent by transmitting through PSOP its acceptance and acknowledgment of the terms of the Notice of Guaranteed Delivery. If the Participant receives the Rights before the day designated by DTC as the Cover end date (the "DTC Cover Protect Expiration Date"),[11] the Participant may submit a Cover of Protect by transmitting its acceptance of the terms in the Letter of Transmittal via a Cover of Protect option in PSOP, and instructing DTC to deliver the Rights and process the payment to the Offer Agent.

DTC's Automated Tender Offer Program

DTC offers the Automated Tender Offer Program ("ATOP"),[12] through which DTC processes Tender/Exchange Offers for Eligible Securities. Offer Agents for Tender/Exchange Offers eligible for processing through ATOP must enter into a master agreement with DTC.

A Participant uses PTOP to transmit its acceptance and acknowledgement of the Letter of Transmittal of the applicable Tender/Exchange Offer and to instruct DTC to deliver the Securities to the Offer Agent. In accordance with permitted instructions, DTC effects book-entry delivery of Securities from the Participant's Account to the Agent Account. When the payment (for a tender offer) and/or Securities (for an exchange offer) are distributed by the Offer Agent, DTC credits the amount of the payment and/or Securities to the Settlement Account or Account of the Participant, respectively.

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[8] A Protect Period is usually three business days after the expiration of the Offer.

[9] Corporate actions processed by DTC include, but are not limited to, the reorganization of Eligible Securities resulting from mergers, acquisitions, and reverse splits. DTC performs corporate actions processing through its Mandatory and Voluntary Reorganization Services. *See* DTC Operational Arrangements, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf.*

[10] *See* Securities Exchange Act Release No. 35108 (December 16, 1994), 59 FR 67356 (December 29, 1994) (SR–DTC–94–15) (instituting ASOP).

[11] The DTC Cover Protect Expiration Date is usually one business day earlier than the Protect Period expiration date established by the terms of the Offer.

[12] For a description of ATOP, refer to Securities Exchange Act Release No. 33797 (March 22, 1994), 59 FR 14696 (March 29, 1994) (SR–DTC–93–11) (approving enhancements to ATOP).

A Participant's Securities may not be available to tender to the Offer Agent prior to the expiration of the Tender/Exchange Offer. If the Participant anticipates receiving the Securities and wants to participate in the Tender/Exchange Offer, it may, if permitted by the terms of the Tender/Exchange Offer, submit a Protect by transmitting through PTOP its acknowledgement and acceptance of the terms of the Notice of Guaranteed Delivery. Before the DTC Cover Protect Expiration Date, the Participant must acknowledge and agree to the terms of the Letter of Transmittal through PTOP and instruct DTC to deliver the Securities to the Offer Agent to Cover such Participant's Protect. If the Participant is unable to deliver the Securities before the DTC Cover Protect Expiration Date, it will have failed to validly tender and will not be eligible for the consideration of the Tender/Exchange Offer.

(c) Proposal

As explained above, there are times when a Participant that submitted a Protect (the "Protecting Participant") may need to have another Participant (the "Covering Participant") Cover the Protect. Currently, neither PSOP nor PTOP has the specific functionality for a Covering Participant to submit a Cover on behalf of a Protecting Participant.

However, DTC is aware that Covering Participants frequently utilize the PSOP/PTOP CPDA option in order to submit a Cover on behalf of another Participant, which is not the intended purpose of the CPDA function. The intended purpose of the CPDA function is to enable a Participant that submitted a Protect directly to an Offer Agent outside of DTC to later submit the corresponding Cover through DTC.

In order to address directly a Participant's need to submit a Cover of another Participant's Protect, DTC proposes to add the CPAP option to PSOP/PTOP. With this enhancement, the Protecting Participant would submit a Protect through PSOP/PTOP, and the Covering Participant would be able to submit a Cover through PSOP/PTOP by providing the Protecting Participant's Protect ID, Protect Sequence Number, and Protect Participant ID. This enhanced functionality would automate the matching of Covers to corresponding Protects, as well as automatically allocate the applicable credits for Securities and/or payments directly to the Protecting Participant, rather than to the Covering Participant. The CPAP option would eliminate the need for Participants to utilize CPDA for the unintended purpose of Covering another Participant's Protect.

In addition, to further reduce the risks, burden, and costs to DTC associated with the manual processing of the CPDA option in PSOP/PTOP, DTC is proposing to eliminate that option. When a Participant uses CPDA to submit a Cover for another Participant's Protect, DTC must manually process the Cover and use manual exception processing to match the Cover to the corresponding Protect. In addition, DTC must allocate the credits for Securities and/or payment from the Offer to the Covering Participant. Even when a Participant uses CPDA for its intended purpose, which is infrequent, it is a labor intensive process for DTC, as it must manually process the Cover and return the allocation to the Offer Agent within a narrow timeframe. Therefore, DTC proposes that when a Participant submits a Protect directly to the Offer Agent, such Participant would need to submit the Cover directly to the Offer Agent, and not through PSOP/PTOP.

(ii) Technical Changes

The proposed rule change would revise the Guide to make ministerial updates to reflect current terminology and practices, as set forth below. The Guide would be updated to:

- Correct the text of the Guide to accurately reflect names of functions accessible through PTS, and to accurately reflect the names of the corresponding functions that are accessible through PBS. Presently, the Guide assigns PTS functions to PBS, and does not provide the names of the corresponding PBS functions.
- Correct the timeframes within which a Participant can submit a Notice of Guaranteed Delivery on the expiration date of a Rights Offer. Generally, a Participant may submit a Notice of Guaranteed Delivery through PSOP/PTOP from 8:00 a.m. to 2:15 p.m., at which time the window closes to allow for settlement of cash activities. However, DTC will re-open the window from 3:30 p.m. to 5:00 p.m. on the expiration date of the Offer to allow Participants extra time to submit a Notice of Guaranteed Delivery before the Offer expires, provided that the Offer Agent agrees to accept deferred subscription payments. The text of the Guide incorrectly reflects an open window from 8:00 a.m. to 5:00 p.m., which is not the practice. With this rule filing, the text would be corrected to reflect the correct 8:00 a.m. to 2:15 p.m. and 3:30 p.m. to 5:00 p.m. windows.
- Pursuant to Participant requests, expand the availability of PTOP for a Participant to submit a Cover of Protect, on the dates specified in the notice of an Offer. The current availability is until 4:15 p.m. or 12:00 p.m., depending on the type of Offer, and the proposed rule change would revise the text to reflect availability until 5:00 p.m. or 1:00 p.m., as applicable.
- Remove references to the UNIT Swingovers service. Several years ago, the UNIT Swingovers service was discontinued, and instead, voluntary unit separations and recombinations[13] began to be processed under the FAST program.[14]
- Clarify information regarding available reports and methods of submission and receipt.
- Replace reference to 'NASDAQ' with 'FINRA'.
- Replace reference to 'AMEX' with 'NASDAQ'.
- Add the title of the Guide, delete 'Copyright,' and update the 'Important Legal Information' to align with other DTC service guides.
- Correct spelling, grammatical, capitalization, numbering, and typographical errors throughout.
- Update other text, including address, phone numbers, Web site information, and methods of communication.

Implementation Date

DTC will announce the effective date via Important Notice upon the Commission's approval of the proposed rule change.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act[15] requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision because (i) by adding the CPAP option by which a Participant can submit a Cover through PSOP/PTOP on behalf of another Participant instead of improperly using the CPDA option that then requires DTC to resort to manual processing and allocate the consideration to the Covering

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[13] A unit is a Security comprised of more than one class of Securities, *e.g.,* common stock and warrants (the components). In a voluntary unit separation, the separation and recombination between the security component and the security is done by the Participant and transfer agent using DTC's Deposit and Withdrawal at Custodian system.

[14] Securities Exchange Act Release No. 59199 (January 6, 2009), 74 FR 1266 (January 12, 2009) (SR–DTC–2008–14).

[15] 15 U.S.C. 78q–1(b)(3)(F).

Participant rather than the Protecting Participant, and (ii) by removing the CPDA option and requiring that Participants that Protect outside of DTC to also Cover outside DTC, the proposed rule change would establish a process that would streamline Cover of Protect transactions, allocations and recordkeeping for Participants, and reduce manual processing and the risks, burdens, and costs associated with such processing for DTC, thereby promoting the prompt and accurate clearance and settlement of securities, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

Additionally, the proposed ministerial changes to the Procedures, which update the Guide as set forth above, would provide additional clarity to Participants and would ensure the accuracy of the Procedures by reflecting the present state of DTC's reorganization services and practices, thereby promoting the prompt and accurate clearance and settlement of securities, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition because it would remove a function that is infrequently used for its intended purpose, and would establish a new function, available to all Participants, without the addition of a new fee.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–DTC–2016–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2016–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2016–005 and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19322 Filed 8–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78511; File No. SR–CBOE–2016–049]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To List Options That Overlie the FTSE Developed Europe Index and the FTSE Emerging Index, To Raise the Comprehensive Surveillance Agreement Percentage Applicable to Certain Index Options, and To Amend the Maintenance Listing Criteria Applicable to Certain Index Options

August 9, 2016.

On June 15, 2016, Chicago Board Options Exchange, Incorporated ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade options that overlie the FTSE Developed Europe Index and the FTSE Emerging Index, raise the comprehensive surveillance agreement percentage applicable to options that overlie the MSCI EAFE Index and the MSCI Emerging Markets Index ("EAFE options" and "EM options"), and amend the maintenance listing criteria applicable to EAFE options, EM options, FTSE 100 Index options, and FTSE China 50 Index options. The proposed rule change was published for comment in the **Federal Register** on July 1, 2016.[3] The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is August 15, 2016.

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78177 (June 28, 2016), 81 FR 43308.

[4] 15 U.S.C. 78s(b)(2).

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates September 29, 2016, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2016–049).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19316 Filed 8–12–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before October 14, 2016.

ADDRESSES: Send all comments to Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, Small Business Administration, 409 3rd Street SW., 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, 202–619–0511, *louis.cupp@sba.gov*, Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The information collected on SBA Form 480, "Size Status Declaration" is a certification of small business size status. This information collection is used to determine whether SBIC financial assistance is provided only to small business concerns as defined in the Small Business Investment Act and SBA size regulations. Without this certification, businesses that exceed SBA's size standards could benefit from program resources meant for small businesses.

Title: "Size Status Declaration".

Description of Respondents: Small business Investment Companies.

Form Number: 480.

Annual Responses: 2,500.

Annual Burden: 417.

Curtis Rich,

Management Analyst.

[FR Doc. 2016–19274 Filed 8–12–16; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 14795 and # 14796]

Montana Disaster # MT–00098

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of MONTANA (FEMA–4275–DR), dated 08/03/2016.

Incident: Tornado.

Incident Period: 06/11/2016.

Effective Date: 08/03/2016.

Physical Loan Application Deadline Date: 10/03/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 05/03/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/03/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fallon

The Interest Rates are:

	Percent
For physical damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere ...	2.625
For economic injury:	
Non-Profit Organizations Without Credit Available Elsewhere ...	2.625

The number assigned to this disaster for physical damage is 14795C and for economic injury is 14796C.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–19281 Filed 8–12–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before October 14, 2016.

ADDRESSES: Send all comments to Mary Frias, Loan Specialist, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Frias, Loan Specialist, Office of Financial Assistance, *mary.frias@sba.gov* 202–401–8234, or Curtis B.

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[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small Business Administration collects this information from lenders who participate in the secondary market program. The information is used to facilitate and administer secondary market transactions in accordance with 15 U.S.C. 634(f)3 and to monitor the program for compliance with 15 U.S.C. 639(h).

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Secondary Participation Guaranty Agreement.

Description of Respondents: Small Business Lending Companies.

Form Number: SBA Forms 1502, 1086.

Total Estimated Annual Responses: 4,625.

Total Estimated Annual Hour Burden: 48,000.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2016–19280 Filed 8–12–16; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2016–0040]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2016–0040].

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than October 14, 2016. Individuals can obtain copies of the collection instrument by writing to the above email address.

Request for Proof(s) from Custodian of Records—20 CFR 404.703, 404.704, 404.720, 404.721, 404.723, 404.725, & 404.728—0960–0766. SSA sends Form SSA–L707, Request for Proof(s) from Custodian of Records, to records custodians on behalf of individuals who need help obtaining evidence of death, marriage, or divorce in connection with claims for benefits. SSA uses the information from the SSA–L707 to determine eligibility for benefits. The respondents are records custodians including statistics and religious entities, coroners, funeral directors, attending physicians, and State agencies.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
State or Local Government	501	1	10	84
Private Sector	99	1	10	17
Totals	600			101

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than September 14, 2016. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Waiver of Your Right to Personal Appearance before an Administrative Law Judge—20 CFR 404.948(b)(l)(i) and 416.1448(b)(l)(i)—0960–0284. Applicants for Social Security, Old Age, Survivors and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) payments have the statutory right to appear in person, or through a representative, and present evidence about their claims at a hearing before an administrative law judge (ALJ). If claimants wish to waive this right to appear before an ALJ, they must do so in writing. Form HA–4608 serves as a written waiver for the claimant's right to a personal appearance before an ALJ. The ALJ uses the information we collect on Form HA–4608 to continue processing the case, and makes the completed form a part of the documentary evidence of record by placing it in the official record of the proceedings as an exhibit. Respondents are applicants or claimants for OASDI and SSI, or their representatives, who request to waive their right to appear in person before an ALJ.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–4608	12,000	1	2	400

2. Letter to Custodian of Birth Records/Letter to Custodian of School Records—20 CFR 404.704, 404.716, 416.802, and 422.107—0960–0693. When individuals need help in obtaining evidence of their age in connection with Social Security number (SSN) card applications and claims for benefits, SSA can prepare the SSA–L106, Letter to Custodian of School Records, or SSA–L706, Letter to Custodian of Birth Records. SSA uses the SSA–L706 to determine the existence of primary evidence of age of SSN applicants. SSA uses both letters to verify with the issuing entity, when necessary, the authenticity of the record submitted by the SSN applicant or claimant. The respondents are schools, State and local bureaus of vital statistics, and religious entities.

Type of Request: Revision of an OMB-approved information collection.

SSA–L106

Type of respondents	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Private Sector	1,800	1	10	300
State/Local/ Tribal Government	1,800	1	10	300
Totals	3,600			600

SSA–L706

Type of respondents	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Private Sector	1,800	1	10	300
State/Local/ Tribal Government	1,800	1	10	300
Totals	3,600			600
Grand Total	7,200			1,200

3. Application Status—20 CFR 401.45—0960–0763. Application Status provides users with the capability to check the status of their pending Social Security claims via the National 800 Number Automated Telephone Service. Users need their SSN and a confirmation number to access this information. SSA systems determine the type of claim(s) the caller filed based upon the information provided. Subsequently, the automated telephone system provides callers with the option to choose the claim for which they wish to obtain status. If the caller applied for multiple claims, the automated system allows the caller to select which claim to obtain status. Once callers select the claim(s) they are calling about, an automated voice advises them of the status of their claim. The respondents are current Social Security claimants who wish to check on the status of their claims.

Type of Request: Revision on an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Automated Telephone Services	160,034	1	3	8,002

Dated: August 9, 2016.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2016–19259 Filed 8–12–16; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2016–0038]

Notice of Senior Executive Service Performance Review Board Membership

AGENCY: Social Security Administration.

ACTION: Notice of Senior Executive Service Performance Review Board Membership.

Title 5, U.S. Code, 4314 (c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before service on said Board begins.

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration:

Joanne Gasparini *
Hyacinth Hinojosa
Michael Kramer
John Lee
Natalie Lu
Lydia Marshall
Royce Min
Patrice Stewart
David E. Thomas
Laura N. Train
Nancy Webb

* New Member

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 2016–19361 Filed 8–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Delegation of Authority No. 400]

Delegation to the Assistant Secretary of State for Educational and Cultural Affairs of the Functions and Authorities Under the Protect and Preserve International Cultural Property Act

By virtue of the authority vested in the Secretary of State by the laws of the United States, including Section 1 of the State Department Basic Authorities Act and the Presidential Memorandum for the Secretary of State—Delegation of Functions and Authorities under the Protect and Preserve International Cultural Property Act, dated August 1, 2016, and delegated pursuant to Delegation of Authority No. 245–1 (February 13, 2009), I hereby delegate to the Assistant Secretary of State for Educational and Cultural Affairs the functions and authorities of the President under the Protect and Preserve International Cultural Property Act (Pub. L. 114–151) delegated to the Secretary of State.

In performing such functions, the Assistant Secretary of State shall consult the Secretary of Homeland Security, the Secretary of the Treasury, and the heads of other departments and agencies or their designees, as appropriate.

Notwithstanding this delegation of authority, the Secretary of State, the Deputy Secretary of State, the Deputy Secretary of State for Management and Resources, and the Under Secretary of State for Public Diplomacy and Public Affairs may at any time exercise any function or authority delegated by this delegation of authority.

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 1, 2016.

Heather A. Higginbottom,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2016–19397 Filed 8–12–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 401]

Delegation of Authority Submission of the Semi-Annual Unified Agenda

By virtue of the authority vested in the Secretary of State by the laws of the United States, including 22 U.S.C. 2651a, and delegated pursuant to Delegation of Authority 198, dated September 16, 1992, I hereby delegate to the Assistant Legal Adviser for Management, to the extent authorized by law, the authority to approve, and submit for publication in the **Federal Register**, the Department's semi-annual submission to the Unified Agenda of Regulatory and Deregulatory Actions.

Prior to submission of the Unified Agenda, the Assistant Legal Adviser shall ensure that the Office of the Under Secretary for Management and all other relevant offices have approved such submission.

Notwithstanding this delegation of authority, the authority delegated herein may be exercised by the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, and the Under Secretary for Management.

This document shall be published in the **Federal Register**.

Dated: August 2, 2016.

Patrick F. Kennedy,

Under Secretary for Management, Department of State.

[FR Doc. 2016–19395 Filed 8–12–16; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Forty-Fifth Meeting: RTCA Special Committee 206 Plenary Aeronautical Information and Meteorological Data Link Services

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: FORTY-FIFTH MEETING RTCA Special Committee 206 Plenary Aeronautical Information and Meteorological Data Link Services.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of FORTY-FIFTH MEETING RTCA Special Committee 206 Plenary Aeronautical Information and Meteorological Data Link Services.

DATES: The meeting will be held September 12–16, 2016, 8:30 a.m.–5:00 p.m. Monday–Thursday, 8:30 a.m.–11:00 a.m. Friday.

ADDRESSES: The meeting will be held at: National Weather Service Training Center, 7220 NW 101st Terrace, Kansas City, Missouri 64153.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or (202) 330–0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the FORTY-FIFTH MEETING RTCA Special Committee 206 Plenary Aeronautical Information and Meteorological Data Link Services. The agenda will include the following:

Monday, September 12, 2016

08:30 a.m. Opening Plenary
1. Opening remarks: DFO, RTCA, Chairman, and Host
2. Attendees' introductions
3. Review and approval of meeting agenda
4. Approval of previous meeting minutes (Ottawa)
5. Action item review
6. Sub-Groups reports
   a. SG1/6: MASPS FRAC Resolution
   b. SG4: EDR MOPS
   c. SG5: FIS–B MOPS
   d. SG7: Winds Guidance
7. TOR Discussion

1:00 p.m. Sub-Groups meetings

Tuesday, September 13, 2016

08:30 a.m. Sub-Groups meetings

Wednesday, September 14, 2016

8:30 a.m. Sub-Groups meetings

Thursday, September 15, 2016

08:30 a.m. Sub-Groups meetings

Friday, September 16, 2016

08:30 a.m. Closing Plenary
1. Sub-Groups reports
2. Decision to approve SG6 MASPS for PMC review
3. Future meetings plans and dates
4. Industry coordination
a. WG–76 Briefing
5. SC–206 action item review
6. Other business
11:00 a.m. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 9, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–19411 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA SC–230 Plenary #9 Meeting Call Notice: WG–95 "Inflight Ice Long Range Awareness Systems" Meeting #5

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: RTCA SC–230 Plenary #9 Meeting Call Notice: WG–95 "Inflight Ice Long Range Awareness Systems" Meeting #5.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA SC–230 Plenary #9 Meeting Call Notice: WG–95 "Inflight Ice Long Range Awareness Systems" Meeting #5.

DATES: The meeting will be held October 4–6, 2016, 08:30 a.m.–5:00 p.m. Tuesday, 08:45 a.m.–5:00 p.m. Wednesday, 08:45 a.m.–15:00 p.m. Thursday.

ADDRESSES: The meeting will be held at: Airbus France SAS, 316 route de Bayonne, 31060 Toulouse, Saint-Martin, France.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or (202) 330–0680, Adrian Cioranu at *adrian.cioranu@eurocae.net* or +33 1 40 92 79 31, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

If you plan to attend please email by *September 16, 2016:* Luke Tschacher at *Luke.A.Tschacher@boeing.com* and Camille Caruhel at *camille.caruhel@airbus.com.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the RTCA SC–230 Plenary #9 Meeting Call Notice: WG–95 "Inflight Ice Long Range Awareness Systems" Meeting #5. The agenda will include the following:

Tuesday, October 4, 2016

08:30–08:50 Arrive at the Airbus Saint-Martin main entrance for badges and transfer to the conference room
09:00–10:15 Airbus presentation (by Gilles CESCON, Head of Manage Flight domain: MRM–TO–M63–1–SALLE 4)
10:15–11:00 Plenary session with WG95 main group (Building M67, Conference Room S126)
11:00–12:00 Introduction for the WG95–SG and Action Item Review
12:00–13:00 Lunch break @ Airbus
13:00–17:00 Review of the actions answers. Close discussion on HMI and write down the guidelines

Wednesday, October 5, 2016

08:45–09:00 Arrive at the Airbus Saint-Martin main entrance for badges and transfer to the conference room (Building M67, Conference Room S384)
09:00–12:00 Review of the whole document and closure of all comments
12:00–13:00 Lunch break @ Airbus
13:00–15:00 Review of the whole document and closure of all comments

Thursday, October 6, 2016

08:45–09:00 Arrive at the Airbus Saint-Martin main entrance for badges and transfer to the conference room (Building M67, Conference Room S052)
09:00–12:00 Review of the whole document and closure of all comments
12:00–13:00 Lunch break @Airbus
13:00–15:00 Review of the whole document and closure of all comments
15:00–17:00 Wrap up of discussion, open discussion items, and conclusions

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 9, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–19408 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Ninth Meeting Special Committee 216 Aeronautical Systems Security

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: TWENTY-NINTH MEETING Special Committee 216 Aeronautical Systems Security.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of TWENTY-NINTH MEETING Special Committee 216 Aeronautical Systems Security.

DATES: The meeting will be held September 19–23, 2016, 09:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at: General Aviation Manufacturers Association, Inc., 1400 K St. NW., #801, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or (202) 330–0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

Notice: Those who plan to attend in person need to provide the following information to Karan Hofmann at *khofmann@rtca.org* no later than Wednesday, September 14th:

Name
Country of citizenship
Company
Email address

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the TWENTY-NINTH MEETING Special Committee 216 Aeronautical Systems Security. The agenda will include the following:

Monday, September 19, 2016—9:00 a.m.–5:00 p.m.

1. Welcome and Administrative Remarks
2. Introductions
3. Agenda Review
4. Meeting-Minutes Review
5. Jointly with WG–72:
   a. Review Joint Action List
   b. Review White Papers
      i. Status and intent of those planned and produced
      ii. Gain common understanding of intent
      iii. Resolve differences
6. Plan next steps in developing WG–72 and SC–216 harmonized draft document
7. Schedule Update
8. Date, Place and Time of Next Meeting
9. New Business
10. Adjourn Plenary

Tuesday, September 20, 2016—9:00 a.m.–5:00 p.m.

Continuation of Plenary or Working Group Sessions

Wednesday, September 21, 2016—9:00 a.m.–3:00 p.m.

Continuation of Plenary or Working Group Sessions

Thursday, September 22, 2016—9:00 a.m.–5:00 p.m.

Continuation of Plenary or Working Group Sessions

Friday, September 23, 2016—9:00 a.m.–5:00 p.m.

Continuation of Plenary or Working Group Sessions

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 9, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–19285 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Automatic Dependent Surveillance Broadcast (ADS–B) Rebate System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The FAA is launching a rebate program to emphasize the urgent need for pilots to comply with Automatic Dependent Surveillance Broadcast (ADS–B) Out requirements ahead of the January 1, 2020, compliance deadline. This program will defray costs associated with the ADS–B equipment and installation for eligible general aviation aircraft, and help ensure that all general aviation aircraft are equipped by the compliance date.

DATES: Written comments should be submitted by September 14, 2016.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson at (202) 267–1416, or by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: Not assigned.

Title: Automatic Dependent Surveillance Broadcast (ADS–B) Rebate System.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: New information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 8, 2016 (81FR36985). There were 3 comments received from the public. On May 21, 2010, the FAA issued a final rule requiring Automatic Dependence Surveillance-Broadcast (ADS–B) Out avionics on aircraft operating in Classes A, B, and C airspace, as well as certain other classes of airspace within the National Airspace System (NAS), no later than January 1, 2020 (75 FR 30160). ADS–B Out equipage is a critical step in achieving the benefits of NextGen, in that it transforms aircraft surveillance with satellite-based precision. When properly equipped with ADS–B, both pilots and controllers can, for the first time, see the same real-time displays of air traffic, and pilots will be able to receive air traffic services in places where it has not been previously available.

To meet this deadline for compliance, the FAA estimated that as many as 160,000 general aviation aircraft would need to be equipped with ADS–B by January 1, 2020. In developing the ADS–B Out final rule, the FAA assumed that these aircraft owners would begin equipping new aircraft with ADS–B equipment in 2012, and begin retrofitting the existing aircraft in 2013, to minimize costs associated with retrofitting outside of the aircraft's heavy maintenance cycle. In any given year, avionics installers are capable of completing approximately 35,000–50,000 installations. In order to guarantee that general aviation aircraft that will operate in ADS–B airspace are equipped by January 1, 2020, approximately 23,000 aircraft would have needed to equip each year beginning in early 2013. This would have ensured there would be a balance between the expected demand for avionics installations and the capacity of avionics installers. Owners of general aviation aircraft who are particularly price sensitive are postponing their installations. This trend demonstrates that there is a near-term need to accelerate equipage, to ensure that pilots, manufacturers, and retail facilities have adequate time and capacity to equip aircraft by the January 1, 2020, compliance deadline. It is necessary to take advantage of the installation capacity available now in order to avoid back-end capacity constraints that could result in some aircraft being unable to receive their upgrades ahead of the compliance deadline, which will, in turn, lead to denial of access to ADS–B airspace once the ADS–B equipage mandate is in effect. This limited-time rebate will provide an incentive for early retrofitting, but it is intended to emphasize the urgent need for pilots to comply with ADS–B Out requirements ahead of 2020.

Section 221 of the FAA Modernization and Reform Act of 2012 provided the FAA with the authority to establish an incentive program for equipping general aviation and commercial aircraft with communications, surveillance, navigation, and other avionics equipment. Thus, the FAA is establishing an initiative (the ADS–B Rebate Program) to addresses the rate of general aviation equipage by incentivizing those aircraft owners who are affected by the ADS–B Out requirements and are the most price sensitive to the cost of avionics and the associated installation. The ADS–B Rebate Program will provide a one-time $500 rebate to an aircraft owner to defray some of the cost of an ADS–B Out system meeting the program eligibility requirements. The rebates will be available on a first come first served basis.

The FAA, with input from industry partners (Aircraft Electronics Association, Aircraft Owners and Pilots Association, and General Aircraft Manufacturers Association), designed this rebate program targeting specific eligibility requirements for avionics, aircraft types, and aircraft owners. The eligibility requirements are as follows:

Eligible Avionics—Technical Standard Order (TSO)-certified Version 2 ADS–B Out system, purchased on or after June 8, 2016. Such equipment must have a TSO marking for TSO–C154c, or TSO–C166b, or both. Eligible ADS–B Out system equipment may have an embedded position source compliant with one of the following TSOs: TSO–C–145c (or subsequent versions), TSO–C146c (or subsequent versions), or may be connected to a separate position source compliant with TSO–C–145c (or subsequent versions) or TSO–C146c (or subsequent versions). Any separate position source must comply with the guidance published in FAA Advisory Circular (AC) 20–165B. ADS–B In/Out systems compliant with TSO–C154c, TSO–C166b, or both, are also eligible.

Eligible Aircraft—Only U.S.-registered, fixed-wing single-engine piston aircraft first registered before January 1, 2016 are eligible for the program. This eligibility will be determined via the FAA Civil Aircraft Registry. Program eligibility also requires permanent installation of new avionics equipment in a single aircraft in compliance with applicable FAA regulations and guidance material.

Aircraft Owner—Program eligibility is limited to one rebate per aircraft owner. An aircraft owner means either a single individual owner or any owning entity (any legal ownership entity including but not limited to an LLC, corporation, partnership or joint venture) identified as the owner of the eligible aircraft in the FAA Civil Aviation Registry.

Exclusions—All aircraft for which FAA has already paid or previously committed to upgrade to meet the ADS–B Out mandate. Software upgrades to existing equipment are not eligible. Aircraft that already have a Version 2 ADS–B Out system prior to the launch of the data collection system are not eligible. New aircraft produced after January 1, 2016, are not eligible.

For reimbursement under this program, the FAA Civil Aircraft Registry information regarding ownership is controlling and the rebate program will be using the publically available database to determine eligibility requirements based on the aircraft information. The aircraft owner is responsible for ensuring that the FAA Civil Aircraft Registry information is accurate before a claim for the rebate is submitted; rebates will only be mailed to the registered owner and address as indicated in the Civil Aircraft Registry.

To request a rebate, the applicant must provide via the program Web site a valid email address for official correspondence and notifications and aircraft-specific information such as the aircraft registration number, TSO-certified equipment purchased, and scheduled installation date. Once the information is submitted, the FAA will validate eligibility for the program with the official records regarding aircraft ownership contained in the publically available Civil Aircraft Registry. Additionally, anyone requesting a rebate will need to accept legal notices electronically by acknowledging their agreement and acceptance and providing the name of the person submitting the information on the individual web application.

Through the ADS–B Rebate Program, aircraft owners will be permitted to reserve a rebate, validate their installation, and then claim their rebate through the ADS–B Rebate Program Web site. The program steps and timeline requirements are as follows:

[1] *Decide:* The aircraft owner arranges for purchase and schedules installation of TSO-certified avionics for an eligible aircraft.

[2] *Reserve:* Before avionics installation occurs, the aircraft owner must go to the ADS–B Rebate Program Web site to submit information for a rebate reservation. Upon successful submission, the system will generate an email with a Rebate Reservation Code. During the rebate reservation process, the eligible aircraft's information is validated against the FAA Civil Aircraft Registry, including ownership information. If there are discrepancies, the aircraft owner may continue with the reservation process; but before a valid Incentive Code can be obtained in step [5], the aircraft owner must ensure that the FAA Civil Aircraft Registry data for their eligible aircraft is corrected.

[3] *Install:* TSO-certified ADS–B avionics are installed in the eligible aircraft.

[4] *Fly & Validate:* Only after the prior steps are completed, the eligible aircraft must be flown in the airspace defined in 14 CFR 91.225 for at least 30 minutes, with at least 10 aggregate minutes of maneuvering flight, per the guidance in AC 20–165B *http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1028666,* sections 4.3.2 and 4.3.2.3–4.3.2.6 for Part 23 aircraft. After flight, the ADS–B data is used to generate a Public Compliance Report (PCR) and General Aviation Incentive Requirements Status (GAIRS) Report, which is how the performance of the eligible aircraft's ADS–B installation is validated. Note that it may be necessary to repeat this step more than once, until the GAIRS Report indicates PASS for all fields and provides an Incentive Code in the Rebate Status section. Once proper installation and operation of the ADS–B is validated the FAA will notify the applicant using the email address provided at the time of rebate request.

[5] *Claim:* Within 60 days of the scheduled installation date, the aircraft owner gathers their Rebate Reservation Code (from step [2]) and their Incentive Code (from step [4]) and submits this

information as well as their name and aircraft number via the ADS–B Rebate Program Web site to complete the claim for their rebate.

The FAA is seeking comments from the public regarding the information we collect for the program and how we collect it. The information provided in this notice is solely to identify and collect information from the public on the potential burden to an individual that would result from this program.

Respondents: Approximately 20,000 rebates.

Frequency: Information is collected only during the times the user is submitting their reservation and claiming their rebate after proof of meeting the eligibility requirements.

Estimated Average Burden per Response: Approximately 6 minutes.

Estimated Total Annual Burden: Approximately 2,000 hours.

Issued in Washington, DC, on August 9, 2016.

Ronda Thompson,

FAA Information Collection Clearance Officer Performance, Policy & Records Management Branch, ASP–110.

[FR Doc. 2016–19427 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixty-Eighth Meeting, Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Sixty-Eighth Meeting, Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Sixty-Eighth Meeting, Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held October 27, 2016, 9:00 a.m.

ADDRESSES: The meeting will be held at: Federal Aviation Administration, Rotorcraft Directorate, Conference Room CC–10C/F, 10101 Hillwood Parkway, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Rebecca Morrison at *rmorrison@rtca.org* or (202) 330–0654 or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Sixty-Eighth Meeting, Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment. The agenda will include the following:

Working Groups October 25–26:

October 25 a.m. Session: Ground Reference Fluctuations/IMA
October 25 p.m. Session: RF Susceptibility
October 26 a.m. Session: Explosion, Water, Fluids/Sections 1–3
October 26 p.m. Session: Power Inputs

Thursday, October 27, 2016 at 9:00am

1. Chairmen's Opening Remarks, Introductions.
2. Approval of Summary from the Sixty-Seventh Meeting—(RTCA Paper No. 185–16/SC135–708).
3. Review Working Group Summaries.
4. Flammability Update—Enclosure Fire Test
5. Review Terms of Reference.
6. New/Unfinished Business.
7. Establish Date for Next SC–135 Meeting.
8. Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 9, 2016.

Mohannad Dawoud

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–19409 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2016 Competitive Research Funding Opportunity: Safety Research and Demonstration (SRD) Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Opportunity (NOFO) And Solicitation Of Project Proposals.

SUMMARY: The Federal Transit Administration (FTA) announces the availability of $7,000,000 in Fiscal Year (FY) 2016 Public Transportation Innovation funds to demonstrate and evaluate innovative technologies and safer designs to improve public transportation safety.

FTA is seeking to fund cooperative agreements to engage in demonstration projects focused in the following two thematic areas: collision avoidance and mitigation and transit worker safety protection.

An eligible lead applicant under this notice must be an existing FTA grant recipient and eligible project partners and sub-recipients under this program may include, but are not limited to, providers of public transportation; State and local governmental entities; departments, agencies, and instrumentalities of the Government, including Federal laboratories; private or non-profit organizations; institutions of higher education; and technical and community colleges. This notice solicits competitive proposals addressing priorities established by FTA for these research areas, provides instructions for submitting proposals, and describes criteria FTA will use to identify meritorious proposals for funding, and the process to apply for funding.

This announcement is also available on the FTA Web site at: *https://www.transit.dot.gov/grants.*

A synopsis of this funding opportunity will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.* The funding Opportunity ID is FTA–2016–007–TRI–SRD and the Catalog of Federal Domestic Asssitance (CFDA) number for Section 5312 funded program is 20.514.

DATES: Complete proposals are due by 11:59 p.m. EDT on October 14, 2016. All proposals must be submitted electronically through the *Grants.gov* "APPLY" function. Prospective applicants should initiate the process by registering on the *Grants.gov* Web site promptly to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA's Web site at *https://www.transit.dot.gov/grants* and in the "FIND" module of *Grants.gov.* Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Please send any questions on this notice to *roywei-shun.chen@dot.gov* or contact Roy Chen, Safety Research Program

Manager, Office of Research, Demonstration, and Innovation (TRI), (202) 366–0462. A TDD is available for individuals who are deaf or hard of hearing at 1–800–877–8339.

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G. Federal Awarding Agency Contacts

A. Program Description

Section 5312 (b) of Title 49, United States Code, as amended by the Fixing America's Surface Transportation (FAST) Act, Pub. L. 114–94, authorizes FTA to fund research, development, demonstrations, and deployment projects to improve public transportation. The Safety Research and Demonstration Program (SRD Program) is a competitive demonstration opportunity under FTA's research emphasis area of safety and in support of the U.S. Department of Transportation's Safety goals that provides technical and financial support for transit agencies to pursue innovative approaches to eliminate or mitigate known safety hazards in public transportation via demonstration of technologies and safer designs.

The goals of FTA's safety research, in general, are to:

- Advance the development of materials, technologies and safer designs to reduce the number of collisions, fatalities and mitigate the severity of transit-related injuries.
- Increase the knowledge about the interface between machinery and people—both transit workers and passengers—and reduce the potential for safety-related incidents.
- Improve the safety culture at transit agencies, as well as support stakeholder coordination and outreach.
- Support the development of transit safety standards, protocols and best practices.

The primary objectives of the SRD program are to assist transit agencies to:

- Explore advanced technologies to prevent transit vehicle collisions.
- Enhance safety of transit services by incorporating safer design elements.
- Evaluate cost-effectiveness and practicability of potential solutions.

As a result of a safety data analysis, research literature review, engagements with stakeholders on topics of "Transit Worker Assaults" and "Bus Operator Visibility" and meeting the statutory requirements under Section 5329 of Title 49, United States Code, FTA is targeting the funding of this solicitation to two specific thematic areas: (a) Collision avoidance and mitigation and, (b) transit worker safety protection.

To ensure any proposed demonstration project address the needs of transit agencies, FTA is requiring that project submittal teams partner with at least one transit agency. FTA will assess the strength of these partnerships in its evaluation of applications.

As envisioned, the SRD program will provide financial and technical assistance for transit agencies to pursue cutting edge technologies and innovative approaches, and more importantly, the opportunity to assess the practicality and effectiveness of these solutions in improving safety and potentially influencing transit industry guidance and standards.

B. Federal Award Information

Section 5312 of Title 49, United States Code, as amended by the FAST Act, authorizes FTA to fund "Public Transportation Innovation". Through this program, FTA may make grants, or enter into contracts, cooperative agreements and other agreements for research, development, demonstration and deployment projects, and evaluation of research and technology of national significance to public transportation that the Secretary of Transportation determines will improve public transportation. A total of $7,000,000 in FY 2016 funds is available for award under this announcement. FTA intends to fund as many meritorious projects as possible under this announcement. FTA recognizes that the funding made available under this announcement may be insufficient to fund all meritorious projects. FTA may, at its discretion, select an application for award of less than the originally-proposed amount if doing so is expected to result in a more advantageous portfolio of projects. Consequently, proposals should provide a detailed budget proposal for the fully-realized project as well as a reduced scope and budget if the project can be scaled down and still achieve useful results. Applicants should specify and justify the minimum award amount needed to achieve effective project results.

FTA anticipates minimum grant awards of $750,000 and maximum grant awards of $2,000,000. Only proposals from eligible recipients (see C.1) for eligible activities will be considered for funding. Funds made available under this program may be used to fund operating expenses and preventive maintenance directly associated with the demonstration of the proposed project, but may not be used to fund such expenses for equipment not essential to the project.

FTA may, at its discretion, provide additional funds for selections made under this announcement or for additional meritorious proposals, if additional funding is made available for Section 5312 of Title 49, United States Code. FTA will announce final selections on the Web site and may also announce selections in the **Federal Register**.

FTA seeks projects that can be implemented/start within six months of project award, and contains a minimum of six months of data collection and evaluation effort. The maximum period of performance allowed for the work covered by the award should not exceed thirty-six (36) months from the date of award.

C. Eligibility Information

1. Eligible Applicants

To be eligible for funding under this NOFO, applicants must demonstrate that the proposed project is supported by a lead applicant in partnership with one or more strategic partner(s) with a substantial interest and involvement in the project. Eligible lead applicants under this notice must be existing FTA grant recipients. An application must clearly identify the eligible lead applicant and all project partners on the team.

Eligible project partners and sub-recipients under this program may include, but are not limited to:

A. Public Transportation Systems;

B. Private for profit and not for profit organizations, including technology system suppliers and bus manufacturers;

C. Operators of transportation, such as employee shuttle services or airport connector services or university transportation systems;

D. State or local government entities; and,

E. Other organizations that may contribute to the success of the project team including consultants, research consortia or not-for-profit industry organizations, and institutions of higher education.

The lead applicant must have the ability to carry out the proposed agreement and procurements with team members in compliance with its respective State and local laws. FTA may determine that any named team member in the proposal is a key party and make any award conditional upon the participation of that key party. A key party is essential to the project as approved by FTA and is therefore eligible for a noncompetitive award by the lead entity to provide the goods or services described in the application. A key party's participation on a selected project may not later be substituted without FTA's approval. For-profit companies may participate on teams; however, recipients and subrecipients of funding under this program may not charge a fee or profit from the FTA research program funding.

In instances where a provider(s) of public transportation is a partner and not the lead proposer, a detailed statement regarding the role of the provider(s) in the conduct of the project is required. Also required is a signed letter from the public transportation service provider's General Manager of his/her commitment to the project and the understanding of the agency's roles/responsibilities in the project.

2. Eligible Projects

Proposers may submit one proposal for each project but not one proposal containing multiple projects. Proposers are allowed to submit multiple proposals, but each eligible project proposals should focus on one of the following two thematic areas: (a) Collision avoidance and mitigation and, (b) transit worker safety protection.

Project proposals must include a research and/or synthesis phase, development phase and a demonstration phase. All phases are critical to project selection. Revenue-service, full-scale demonstrations are preferred where practicable. However, in cases where a full-scale demonstration would be impractical, detailed plans for non-revenue service or limited demonstration of the innovative technology or designs will be considered. Basic research or studies that do not result in any demonstration of the potential for commercialization or broad deployment within the scope of the project will not be considered for funding.

For the purpose of this solicitation, a "bus" is defined as a rubber-tired, low-floor transit passenger vehicle, 35 feet or longer in length, operating on fixed routes and schedules over roadway and is self-powered.

a. Collision Avoidance and Mitigation

The advent of advanced electronics, computing power, and communication technologies has allowed the introduction of new safety remedies that can assist drivers in avoiding collisions. Some of the active collision avoidance and mitigation technologies are still in the developmental stage but many of them are becoming mainstream in the personal vehicle market. In this solicitation, FTA would like to evaluate the safety performance of such systems for the transit bus application, which has a different operating environment and challenges than personal vehicles. FTA wants to work with the industry to demonstrate the most promising technologies and facilitate their introduction and deployment in the transit industry. Candidate active collision avoidance and mitigation technologies for demonstration may include, but not be limited to, advanced braking system; blind spot warning; pedestrian collision warning; 360 surround view; driver alert warning; and lane departure warning.

In addition to active collision avoidance and mitigation technologies, FTA is soliciting proposals to mitigate transit bus operator blind spots through vehicle design changes, in order to improve operator visibility and potentially reduce collisions. FTA believes that there are technical merits in pursuing different approaches that do not add technological complexity to the vehicle, or increase the human-machine interface and driver's workload. Potential design modifications for demonstration may include, but not limited to, seating distance between the driver and the A-pillars, thickness and orientation of the A-pillars, manufacturing process and material selection, angle of the windshield, and mirror location, type and size.

The "passive approach" proposals need to quantify the blind spots of an existing bus model to be modified, establish a quantitative blind spot reduction goal, and outline the proposed design modifications to achieve the goal. The proposed designs should strive to meet existing Federal Motor Vehicle Safety Standards (FMVSS), FTA, Society of Automotive Engineers (SAE) and American Public Transportation Association (APTA) transit vehicle standards and guidelines, and document any deviations from existing standards and guidelines. The proposal should quantify the blind spots using SAE J1050 or other applicable measurement standards of the driver's field of view (examples: SAE J264, SAE J941, SAE J985 or others that are appropriate). The proposed design should target a height and weight range from a 5th percentile female to a 95th percentile male operator.

The prototype buses are not required to be tested or certified at FTA's Altoona Bus Testing Program, if procured using this research funding (Section 5312). However, FTA is providing the option to have the prototype buses tested at FTA's Bus Testing Program, if desired by the project teams, before demonstrating the prototypes at the transit agencies. The purpose of the demonstration phase is to go beyond laboratory settings (quantification of the % blind spots improvement, computer aided modeling, final element analysis or others) and focus on how the design changes perform in an operating environment. The demonstration phase should capture bus operators' feedback for maintainability, reliability, driver satisfaction, human factors/driver ergonomics issues and also document any deviations from any relevant Federal standards or industry guidelines.

b. Transit Worker Safety Protection

The FTA's Transit Advisory Committee for Safety (TRACS) issued a report on "Preventing and Mitigating Transit Worker Assaults in the Bus and Rail Transit Industry" in July, 2015. The report states that in 2013, 28 transit workers died due to violence on the job, and the vast majority of assaults against transit workers are non-fatal. FTA believes that any form of violence against transit workers poses a serious threat on the physical safety and emotional well-being of transit workers and also endangers the safety of passengers and the public. FTA has also launched a "National Online Dialogue on Transit Worker Assault" to engage the industry. The purpose of the dialogue is to establish a forum and collect inputs from the stakeholders on this important issue. FTA expects the selection of research demonstration projects under this thematic area to be responsive to transit stakeholder's input on the subject.

Acknowledging the variety of control strategies that could be used by transit agencies and that no single solution fits every agency, for the purpose of this solicitation, FTA is seeking proposals that identify, develop, and demonstrate an on-board vehicle protective system that prevent and mitigate the risk of transit bus operator assaults. Candidate technologies and designs elements of the on-board protective infrastructure for demonstration may include, but not limited to, protective barriers, video surveillance systems, emergency communication systems, automatic vehicle location systems. The protective barrier should be designed for height and weight range from a 5th percentile female to a 95th percentile male operator, open/close at the discretion of the operator, address possible visual hazards from reflections and reduced visibility of the mirrors and heating and ventilation comfort.

The purpose of the demonstration is to determine the most effective technologies and designs to prevent and mitigate driver assaults. This includes documenting the maintenance and operational cost, effectiveness of the system, driver satisfaction and human factor issues associated with the technologies, proposed design elements and performance specifications, as well.

Another group of transit employees exposed to higher safety risks are rail transit wayside workers. FTA is seeking proposals to adopt technological solutions, as a secondary safety system, which will automatically alert wayside workers of approaching trains and automatically alert train operators when approaching areas with workers on or near the tracks. The proposal must clearly define the uniqueness of the system and how it differs, and improves upon, existing commercial systems.

The proposed system shall be designed with, but not limited to, features that would enhance safety by warning work crews of on-coming trains, notifying train operators when approaching a work zone or workers on the tracks, informing wayside workers when conditions change in the field (*e.g.,* trains running in a reverse direction, cancellation or changes in track rights) and monitoring the right-of-way location of the work crew (*e.g.,* track inspectors, maintainers and other roving crews) in real-time from an Operations Control Center. Also, the proposed system should be designed to work with both revenue and non-revenue equipment, with ease of service, ease of maintenance, high reliability and minimal adverse impacts to rail system performance.

3. Cost Sharing or Matching

The federal share of project costs under this program is limited to eighty percent (80%). Proposers may seek a lower Federal contribution. The applicant must provide the local share of the net project cost in cash, or in-kind, and must document in its application the source of the local match. Regardless of minimum share requirements, cost sharing is an evaluation criterion and proposals with higher cost share than the minimum twenty percent (20%) share requirement will be considered more favorably. Cash and other high-quality match will be considered more favorably than in-kind cost matching, though all are acceptable. Eligible sources of local match are detailed in FTA Research Circular 6100.1E. (available at *https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/final-circulars*).

4. Other Requirements

a. Evaluation and Data Requirements

In order to achieve a comprehensive understanding of the impacts and implications of each proposed SRD demonstration, FTA, or its designated independent evaluator, requires access to project data. Projects should include a data capture component that allows for the reliable and consistent collection of information relevant to gauging the impact and outcomes of the demonstration.

At any time during the period of performance, the project team may be requested to coordinate data collection activities in order to provide interim information under the requirements of this award. A project team may be asked to provide the data directly to FTA or to a designated independent evaluator. This information, if requested, will be used to conduct program evaluations during the execution of the project and after it has been completed. FTA is required by 49 U.S.C. Section 5312 to evaluate every demonstration project within two years after award.

All information submitted as part of or in support of the SRD project shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the submission includes information the applicant considers to be trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission "Contains Confidential Business Information (CBI)"; (2) mark each affected page "CBI"; and (3) highlight or otherwise denote the CBI portions. FTA protects such information from disclosure to the extent allowed under applicable law. In the event that FTA receives a Freedom of Information Act (FOIA) request for the information, FTA will follow the procedures described in the U.S. DOT FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA. Should FTA receive an order from a court of competent jurisdiction ordering the release of the information, FTA will provide applicant timely notice of such order to allow the applicant the opportunity to challenge such an order. FTA will not challenge a court order on behalf of applicant.

b. Participation in Information Exchange

SRD demonstration Project teams may be asked to participate in safety related information exchange meetings, conferences, webinars, or outreach events where SRD demonstration teams share information with the transit industry and stakeholders on the progress and results of their project activities.

D. Application and Submission Information

1. Address and Form of Application Submission

Project proposals must be submitted electronically through *Grants.gov* (*www.grants.gov*) by October 14, 2016. Mail and fax submissions will not be accepted. A complete proposal submission will consist of at least two files: (1) The SF 424 Mandatory form (downloaded from *Grants.gov*) and (2) the Applicant and Proposal Profile supplemental form for the "Safety Research and Demonstration Program" (supplemental form) found on the FTA Web site at *https://www.transit.dot.gov/research-innovation/safety-research-and-demonstration-program.* The supplemental profile provides guidance and a consistent format for proposers to respond to the criteria outlined in this NOFO. Once completed, the supplemental profile must be placed in the attachments section of the SF 424 Mandatory form. Proposers must use the supplemental profile designated for the "Safety Research and Demonstration" and attach it to their submission in *Grants.gov* to successfully complete the application process. A proposal submission may contain additional supporting documentation as attachments. Supporting documentation could include but is not limited to support letters, pictures, digitized drawings, and spreadsheets.

Within 24 to 48 hours after submitting an electronic application, the applicant should receive 3 email messages from *Grants.gov:* (1) Confirmation of successful transmission to *Grants.gov,* (2) confirmation of successful validation by *Grants.gov,* and (3) confirmation of successful validation by FTA. If confirmations of successful validation are not received and a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission.

Complete instructions on the application process can be found at *https://www.transit.dot.gov/grants.* FTA strongly encourages proposers to submit their applications at least 72 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. FTA will not accept submissions after the stated submission deadline for any reason. *Grants.gov* scheduled maintenance and outage times are announced on *Grants.gov.* Deadlines will not be extended due to scheduled maintenance or outages.

Proposers are encouraged to begin the process of registration on the *Grants.gov* Web site well in advance of the submission deadline. Instructions on the *Grants.gov* registration process are listed in Appendix A. Registration is a multi-step process, which may take 3 to 5 days, but could take as much as several weeks to complete before an application can be submitted if the applicant needs to obtain certain identifying numbers external to *Grants.gov* (for example, applying for an Employer Identification Number). Registered proposers may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) Registration in the System for Award Management (SAM) is renewed annually and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *Grants.gov* by the AOR to make submissions.

Proposers may submit one proposal for each project but not one proposal containing multiple projects. Information such as proposer name, Federal amount requested, local match amount, description of areas served, etc. may be requested in varying degrees of detail on both the SF 424 Form and Supplemental Form. Proposers must fill in all fields unless stated otherwise on the forms. Proposers should use both the "CHECK PACKAGE FOR ERRORS" and the "VALIDATE FORM" validation buttons on both forms to check all required fields on the forms, and ensure that the federal and local amounts specified are consistent. The information described in Sections "E" through "H" below MUST be included and/or addressed on the SF 424 Form and other supplemental forms for all requests for the "Safety Research and Demonstration Program" funding.

2. Proposal Content

At a minimum, every proposal must include an SF–424 form, with the Applicant and a Proposal Profile supplemental form attached. The Applicant and Proposal Profile supplemental form for SRD Program can be found on the FTA Web site at *https://www.transit.dot.gov/research-innovation/safety-research-and-demonstration-program.*

All applicants are required to provide detailed information on the Applicant and Proposal Profile supplemental form, including:

(a) State the project title, the overall goals of the project, and describe the project scope, including anticipated deliverables.

(b) Discuss the current state of practice, challenges and how the proposed project will address those needs.

(c) Details on whether the proposed demonstration is a new effort or a continuation of a prior research and degree of improvement over current technologies and practices.

(d) Address each evaluation criterion separately, demonstrating how the project responds to each criterion as described in Section E.

(e) Provide a line-item budget for the total project with enough detail to indicate the various key components of the project. As FTA may elect to fund only part of some project proposals, the budget should provide for the minimum amount necessary to fund specific project components of independent utility. If the project can be scaled, provide a scaling plan describing the minimum funding necessary for a feasible project and the impacts of a reduced funding level.

(f) Provide the Federal amount requested and document the matching funds, including amount and source of the match (may include local or private sector financial participation in the project). Provide support documentation, including financial statements, bond-ratings, and documents supporting the commitment of non-federal funding to the project, or a timeframe upon which those commitments would be made.

(g) A project time-line outlining steps from project implementation through completion, including significant milestones and the roles of the responsible team members.

(h) The proposed location(s) of the research and demonstration, the type of public transportation service where the technology or design modifications will be demonstrated.

(i) The technology(ies) and design modification to be used in this demonstration and explanation of the principle of operation for the public transportation service, type of transit vehicle (example: Bus, articulated bus, over-the-road bus, heavy rail, light rail, etc.), vehicle manufacturer and model. Including, the number of transit vehicles involved in the demonstration.

(j) A description of any exceptions or waivers to FTA requirements or policies necessary to successfully implement the proposed project. FTA is not inclined to grant deviations from its requirements, but may consider deviations if the applicant can show a compelling benefit. Example: Buy America requirement, Deferred Local Share, Letter of No prejudice, etc.

(k) Potential issues (technical or other) that may impact the success of the project.

(l) Address whether other Federal funds have been sought for the project.

(m) Provide Congressional district information for the project's place of performance.

3. Unique Entity Identifier and System for Award Management (SAM) Registration in Brief

Registration can take as little as 3–5 business days, but since there could be unexpected steps or delays (for example, if you need to obtain an EIN), FTA recommends allowing ample time for completion of all steps.

STEP 1: Obtain DUNS Number: Same day. If requested by phone (1–866–705–5711) DUNS is provided immediately. If your organization does not have one, you will need to go to the Dun & Bradstreet Web site at *http://fedgov.dnb.com/webform* to obtain the number.

STEP 2: Register with SAM: Three to five business days or up to two weeks. If you already have a TIN, your SAM registration will take 3–5 business days to process. If you are applying for an EIN please allow up to 2 weeks. Ensure that your organization is registered with the System for Award Management (SAM) at System for Award Management (SAM). If your organization is not, an authorizing official of your organization must register.

STEP 3: Username & Password: Same day. Complete your AOR (Authorized Organization Representative) profile on *Grants.gov* and create your username and password. You will need to use your organization's DUNS Number to complete this step. *https://apply07.grants.gov/apply/OrcRegister.*

STEP 4: AOR Authorization: Same day (depending on responsiveness of your E-Biz POC). The E-Business Point of Contact (E-Biz POC) at your organization must login to *Grants.gov* to confirm you as an Authorized Organization Representative (AOR). Please note that there can be more than one AOR for your organization. In some cases the E-Biz POC is also the AOR for an organization.

STEP 5: TRACK AOR STATUS: At any time, you can track your AOR status by logging in with your username and password. Login as an Applicant (enter your username & password you obtained in Step 3) under applicant profile.

4. Submission Dates and Times

Project proposals must be submitted electronically through *http://www.GRANTS.GOV* by 11:59 p.m. EDT on October 14, 2016.

5. Funding Restrictions

Funds under this NOFO cannot be used to reimburse projects for otherwise eligible expenses incurred prior to FTA award of a Grant Agreement or Cooperative Agreement unless FTA has issued a "Letter of No Prejudice" for the project before the expenses are incurred.

The SRD Program is a research and development effort and as such FTA Circular 6100.1E rules will apply in administering the program (available at *https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/final-circulars*).

E. Application Review

1. Evaluation Criteria

Projects will be evaluated by FTA according to the following six evaluation criteria described in this section. Each proposer is encouraged to demonstrate the responsiveness of a project to all the criteria shown below with the most relevant information that the proposer can provide.

The FTA will assess the extent to which a proposal addresses the following criteria:

(a) Project Innovation and Impact

(i) Effectiveness of the project in achieving and demonstrating the specific objectives of the SRD Program.

(ii) Demonstration of benefits in addressing the needs of the transit agency and industry.

(iii) Degree of technological improvement over current and existing technologies or vehicle design.

(b) Project Approach

(i) Quality of the project approach, including interface design, existing partnerships and collaboration strategies in meeting the objectives of SRD program.

(ii) Level of cost share by project partners to support the proposed project (in-kind or cash).

(iii) Details on whether the proposed demonstration is a new effort or a continuation of a related research or demonstration project.

(c) National Applicability

(i) Degree to which the project could be replicated by other transit agencies regionally or nationally.

(ii) Ability to evaluate technologies and designs in a wide variety of conditions and locales.

(d) Team Capacity and Commitment

(i) Timeliness of the proposed project schedule, and reasonableness of the proposed milestones.

(ii) Availability of existing resources (physical facilities, human resources, partnerships) to carry out the project.

(iii) Demonstrated capacity and experience of the partners to carry out the demonstration project of similar size and/or scope.

(e) Commercialization or Dissemination Plan

(i) Demonstrates an effective, timely, and realistic plan for moving the results of the project into the transit marketplace.

(ii) Description of how the project team plans to disseminate the result of the project to the transit industry.

(f) Return on Investment

(i) Cost-effectiveness of the proposed project.

(ii) Anticipated measurable safety benefits and/or potential impact on industry guidance and standards.

(iii) The anticipated intangible benefits, such as making public transportation service more appealing to potential passengers, providing educational opportunities, or reducing negative externalities such as traffic congestion or others.

2. Review and Selection Process

A technical evaluation panel comprised of FTA staffs and possibly other DOT staffs will review project proposals against the evaluation criteria listed above. Members of the technical evaluation panel reserve the right to evaluate proposals they receive and seek clarification from any proposer about any ambiguous statement in the proposal. FTA may also request additional documentation or information to be considered during the evaluation process. After a thorough evaluation of all valid proposals, the technical evaluation panel will provide project recommendations to the FTA Administrator. The FTA Administrator will determine the final list of project selections, and the amount of funding for each project. Geographic diversity, diversity of project type, and the applicant's receipt of other Federal funding may be considered in FTA's award decisions.

F. Federal Award Administration

The FTA intends to fund multiple meritorious projects to support executing eligible project activities. To enhance the value of the portfolio of research and demonstration projects to be implemented, FTA reserves the right to request an adjustment of the project scope and budget of any proposal selected for funding. Such adjustments shall not constitute a material alteration of any aspect of the proposal that influenced the proposal evaluation or decision to fund the project.

1. Federal Award Notice

Subsequent to announcement by the Federal Transit Administration of the final project selections posted on the FTA Web site, FTA may publish a list of the selected projects, including Federal dollar amounts and recipients.

2. Administrative and National Policy Requirements

(a) Pre-Award Authority

The FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection. The FTA does not provide pre-award authority for competitive funds until projects are selected and even then there are Federal requirements that must be met before costs are incurred. Preparation of proposals is not an eligible pre-award expense.

b. Grant Requirements

Successful proposals will be awarded through FTA's Transit Award Management System (TrAMS) as Cooperative Agreements.

c. Planning

The FTA encourages proposers to engage the appropriate State Departments of Transportation, Regional Transportation Planning Organizations, or Metropolitan Planning Organizations in areas likely to be served by the project funds made available under this programs.

d. Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

e. Reporting

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Reports in FTA's electronic grants management system on a quarterly basis for all projects.

G. Federal Awarding Agency Contacts

For further information concerning this notice please contact the FTA SRD Program manager Roy Chen at *royweishun.chen@dot.gov* or 202–366–0462. A TDD is available for individuals who are deaf or hard of hearing at 1–800–877–8339.

Carolyn Flowers,

Acting Administrator.

[FR Doc. 2016–19391 Filed 8–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–FAA–2016–1330]

Privacy Act of 1974; Department of Transportation, Federal Aviation Administration, DOT/FAA–801; Aviation Registration Records System of Records Notice

AGENCY: Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation, DOT.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the United States Department of Transportation proposes to update and reissue a current Department of Transportation system of records titled, "Department of Transportation Federal Aviation Administration; DOT/FAA–801, Aviation Registration Records System." This Privacy Act Systems of Records Notice (SORN) is being updated to reflect an additional system location, categories of records, authorities, storage, retrievability, and safeguarding related to implementation of the FAA General Aviation (GA) Automatic Dependent Surveillance-Broadcast (ADS–B) Rebate Program. This SORN is also being updated to add an additional location for the ADS–B Program. In addition, new categories of records, Rebate Reservation Code and Incentive Code, Public ADS–B Performance Reports (PAPR) are being added. The authorities section is being updated to reflect the new authority under Section 221(a) of the FAA Modernization and Reform Act of 2012 which authorizes the ADS–B incentive program. The storage, retrievability, and safeguarding procedures sections are being updated to reflect that ADS–B records are maintained and safeguarded separate from the Civil Aircraft Registry (CAR) records in FAA facilities. A previously published Routine Use is being updated to include the sharing of ADS–B summary reports with members of the public in order facilitate compliance with FAA equipage requirements and performance standards. The records retention section has been updated to include records created to support the ADS–B Out Final Rule and Rebate programs.

DATES: Written comments should be submitted on or before September 14, 2016. The Department may publish an amended Systems of Records Notice in light of any comments received. This new system will be effective September 14, 2016.

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2015–0235 by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–FAA–2016–13307. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; *privacy@dot.gov;* or 202.527.3284.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT)/Federal Aviation Administration (FAA) proposes to update and reissue a DOT system of records titled, "DOT/FAA–801 Aviation Registration Records."

In May of 2010, the FAA published a final rule titled Department of Transportation, Federal Aviation Administration, 14 CFR part 91, Automatic Dependent Surveillance-Broadcast (ADS–B) Out Performance Requirements. This rule mandates that aircraft flying in certain controlled airspace be equipped with ADS–B Out technology by Jan. 1, 2020. In order to accelerate compliance with the 2010 ADS–B Out Final Rule, the FAA is offering a financial incentive to owners of general aviation aircraft to encourage compliance with the ADS–B Out Final Rule. Rebates are available to owners of U.S.-registered, fixed-wing, single-engine piston aircraft that purchase and install FAA Technical Standard Orders (TSO) certified avionics. The FAA will offer up to 20,000 rebates of $500 *on a first-come, first-served basis* to owners of these aircraft; and so long as funding is available or one (1) year from the beginning of the program; whichever occurs first.

In order for an aircraft owner to initiate the rebate claim process, they must access the GA ADS–B Rebate

Program web application, provide the aircraft registration number, their email address, signature and click statements acknowledging no liability to the FAA for their ADS–B equipment. The ADS–B rebate application will manage rebate reservation and claim records which includes a rebate code, incentive code, and the email address associated with every rebate reservation and claim. The purpose of the rebate reservation code and incentive code is to allocate one of the 20,000 rebates available and to ensure the aircraft has completed the equipment installation. Once the reservation application process is complete, the owner is emailed a rebate reservation code. This unique code is used in the ADS–B rebate Web site application to ensure that only one aircraft and associated owner receives a rebate.

ADS–B, Traffic Information Service—Broadcast (TIS–B), and Flight Information Service—Broadcast (FIS–B) records are created when a pilot submits an ADS–B/TIS–B/FIS–B Problem Report to the FAA to report an issue or problem with any of the ADS–B-related services provided by the FAA. The FAA uses the email address collected in order to communicate back to the reporting pilot about the issue or problem that they reported.

The ADS–B Compliance Monitor (CM) enables FAA to assist aircraft owners, pilots and avionics installers to validate the performance of their ADS–B equipment installation upon request. This is communicated via the Public ADS–B Performance Report (PAPR).

In order to complete the claim rebate process, no later than 60 days after the scheduled installation date provided in the reservation, the aircraft owner must go to the GA ADS–B Rebate Web site and provide their aircraft registration number, rebate reservation code, incentive code and email address. If approved, the rebate payments will be processed by the third party vendor Aircraft Electronics Association (AEA). AEA will then issue the aircraft owner a rebate check based on the information provided by the FAA. The FAA will receive the check number and date of issuance from AEA to validate the process was completed.

This system of records notice (SORN) is being updated to add the new categories of records held for operational implementation of the ADS–B Out Rulemaking including administration of the GA ADS–B Rebate program on-going compliance monitoring, and ADS–B/TIS–B/FIS–B problem report programs. The authorities for collection are being expanded to include Section 221(a) of the FAA Modernization Act of 2012 which provides for the establishment of the ADS–B incentive program which is in the interest of achieving next generation capabilities for such aircraft. The purpose section is being updated to reflect the data collected and used by the FAA necessary validate aircraft eligibility for the ADS–B rebate program and to send payment to the aircraft owner's address of record. The data collected and utilized includes information previously provided by aircraft owners during aircraft registration process and maintained in the CAR as well as the separate collection of.name, home address and aircraft tail number. In addition, to support of the ADS–B Rebate program the information contained in these systems will be used by the FAA to provide program oversight and perform statistical analysis of various parameters of the FAA ADS–B Program in support of FAA's safety programs and agency management. The storage and safeguarding sections of this SORN are being updated to reflect that payment information is being stored at a third party vendor location to issue a rebate to aircraft owners in connection with the ADS–B rebate program.

The records retention section is being updated to reflect the proposed records schedule for the ADS–B rebate, CM programs and ADS–B/TIS–B/FIS–B Problem Reports. Finally the retrievability section is being updated because the ADS–B rebate program and ADS–B CM records are retrieved by the aircraft registration number. Additional non-substantive modifications have been made to the SORN text to provide clarity.

II. Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System of Records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them and to contest inaccurate information).

In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Transportation (DOT)/FAA—801.

SYSTEM NAME:

Department of Transportation (DOT)/ALL—801, Aviation Registration Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Aircraft Registration Branch, Federal Aviation Administration, Mike Monroney Aeronautical Center, Oklahoma City, OK 73125.

FAA UAS Registration Service is a contractor managed system and the records are located by the contract manager: Aircraft Registration Branch, Federal Aviation Administration, Mike Monroney Aeronautical Center, Oklahoma City, OK 73125.

FAA ADS–B CM database, the GA ADS–B Rebate application database, the ADS–B/TIS–B/FIS–B Problem Report database, and associated records are located at FAA William J. Hughes Technical Center. 101 Atlantic City International Airport, Egg Harbor Township, New Jersey 08405.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aircraft owners, lien holders, and lessees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Aircraft Registration Numbers; Aircraft manufacturer name, model, serial numbers, Registered owner name, address, email, telephone number; Registration Information: (Status: Pending, valid, expired, canceled; type of ownership: Individual, partnership, corporate, government, co-owned; dates: Registration and expiry; airworthiness: Type, status, date); Aircraft registration documents; Instruments affecting aircraft ownership, loan, lien, or lease interests; Applications for airworthiness; Major repair and alteration reports; Registered owner credit card information (FAA UAS Registration Service user only). ADS–B Rebate Reports (including but not limited to Rebate Reservation Code; Incentive Code, and user-specified date of validation flight); ADS–B/TIS–B/FIS–B Problem Reports including name, email address, and information about the reported issue/problem, including location and aircraft avionics equipage from pilots.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

i. 49 U.S.C. 44102, Registration requirements

ii. 49 U.S.C. 44103, Registration of aircraft

iii. 49 U.S.C. 44104, Registration of aircraft components and dealer's certificates of registration

iv. 49 U.S.C. 44105, Suspension and revocation of aircraft certificates

v. 49 U.S.C. 44106, Revocation of aircraft certificates for controlled substance violations

vi. 49 U.S.C. 44107, Recordation of conveyances, leases, and security instruments

vii. 49 U.S.C. 44110, Information about aircraft ownership and rights

viii. 49 U.S.C. 44111, Modifications in registration and recordation system for aircraft not providing air transportation

ix. 14 CFR parts 45, 47–49

x. Section 221(a) of the FAA Modernization and Reform Act of 2012

PURPOSE(S):

Provide a register of United States civil aircraft to aid in the national defense and to support a safe and economically strong civil aviation system, and to meet treaty requirements under the Convention on International Civil Aviation, Annex 7. To determine that aircraft are registered in accordance with the provisions of 49 U.S.C. 44103. To support FAA safety programs and agency management. To aid law enforcement and aircraft accident investigations. To serve as a repository of legal documents to determine legal ownership of aircraft. Provide aircraft owners and operators information about potential mechanical defects or unsafe conditions of their aircraft in the form of airworthiness directives. To aid in compliance with FAA standards including but not limited to agency enforcement regulations. Educate owners regarding safety requirements for operation. Receive and record payment of aircraft registration fee. Determining eligibility for and issuance of a rebate for equipage under the GA ADS–B Rebate Program. After January 1, 2020, the FAA Flight Standards organization will utilize the ADS–B Compliance Monitor in ongoing enforcement of agency regulations. To communicate with aircraft pilots and owners regarding reported ADS–B-related service issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to other disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the public (including government entities, title companies, financial institutions, international organizations, FAA designee airworthiness inspectors, and others) information, including aircraft owner's name, address, United States Registration Number, aircraft type, legal documents related to title or financing of an aircraft, and ADB–S summary reports. Email addresses, credit card information, and telephone numbers of small unmanned aircraft system (sUAS) owners registered under 14 CFR part 48 will not be disclosed pursuant to this Routine Use. The public may only retrieve the name and address of owners of sUAS registered under 14 CFR part 48 by the unique identifier displayed on the aircraft.

2. To law enforcement, when necessary and relevant to a FAA enforcement activity.

3. The Department has also published 14 additional routine uses applicable to all DOT Privacy Act systems of records, including this system. These routine uses are published in the **Federal Register** at 75 FR 82132, December 29, 2010, and 77 FR 42796, July 20, 2012, under "Prefatory Statement of General Routine Uses" (available at *http://www.transportation.gov/privacy/privacyactnotices*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Individual records for registered and canceled aircraft are maintained in an electronic digital image system. Some canceled aircraft records are stored as paper file folders until their conversion to digital images is completed. Backup copies of imaged records are stored at remote locations. ADS–B Rebate Web site records, ADS–B/TIS–B/FIS–B Problem Report records, and ADS–B CM records are maintained on the Electronic Data Centers Oracle Real Application Clusters (RAC) Systems at FAA facilities. ADS–B rebate program payment records are stored on the FAA servers.

RETRIEVABILITY:

Records of registered and cancelled aircraft in the digital image system may be retrieved by registration number, the manufacturer's name, model, and serial-number, credit card transaction number, and by the name of the current registered owner. Records are retrieved by the aircraft description. Unconverted canceled records may be retrieved using a former registration number and the manufacturer's name, model and serial-number. ADS–B rebate program and ADS–CM records are retrieved by the aircraft registration number. TIS–B/FIS–B records are retrieved by the reporting pilot's name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Access to ADS–B CM Rebate and ADS–B/TIS–B/FIS–B Problem Report records are limited to those with appropriate security credentials, an authorized purpose, and need-to-know. The FAA deploys role-based access controls in addition to other protection measures reviewed and certified by the FAA's cybersecurity professionals to maintain the confidentiality, integrity, and availability requirements of the system.

RETENTION AND DISPOSAL:

Aircraft registration records submitted under 14 CFR part 47 have been deemed by the National Archives and Records Administration to be of permanent value (see NARA Schedule N1–237–04–3). Paper copies of registration submissions are destroyed once the original is scanned into the system and the digital image is determined to be an adequate substitute for paper records. Copies of the Aircraft Registration system are transferred to NARA on an annual basis. The FAA has submitted to NARA a recommended retention period for aircraft registration records submitted under 14 CFR part 48 as permanent which is consistent with the registration of manned aircraft. Until small UAS registration records have been scheduled with NARA the FAA will provide annual snapshots of the database to NARA to determine historical value. The FAA (DAA–0237–2016–0008) proposes to maintain most records created in support of the ADS–B Rebate Program for 3 years after the program ends; payment records will be retained for 6 years; The FAA will manage ADS–B related records as permanent records until the proposed schedule is approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Aircraft Registration Branch, AFS–750, Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125. Manager, Automatic Dependent Surveillance—Broadcast (ADS B) Program, AJM–2323 800 Independence Ave. SW., Washington, DC 20591.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Individuals, manufacturers of aircraft, maintenance inspectors, mechanics, and FAA officials. All forms associated with this system and subject to the Paperwork Reduction Act have been approved by the Office of Management and Budget (OMB) under the referenced information collection requests; OMB control numbers, 2120–0024, 2120–0029, 2120–0042, 2420–0043, 2120–0078, and 2120–0729.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Issued in Washington, DC.

Claire W. Barrett,

Departmental Chief Privacy Officer.

[FR Doc. 2016–19354 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number DOT–OST–2014–0031]

Agency Information Collection; Activity Under OMB Review; Passenger Origin-Destination Survey Report

AGENCY: Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 25, 2016 (81 FR 33321). No comments were received.

DATES: Written comments should be submitted by September 14, 2016.

FOR FURTHER INFORMATION CONTACT: James Bouse, Office of Airline Information, RTS–42, Room E34–441, OST–R, BTS, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone Number (202) 366–4876, Fax Number (202) 366–3383 or EMAIL *james.bouse@dot.gov.*

COMMENTS: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: OST Desk Officer.

SUPPLEMENTAL INFORMATION:

OMB Approval No.: 2139–0001.

Title: Passenger Origin-Destination Survey Report.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers that provide scheduled passenger service.

Number of Respondents: 48.

Total Number of Annual Responses: 192.

Estimated Time per Response: 60 hours.

Total Annual Burden: 11,520 hours.

Needs and Uses: Survey data are used in monitoring the airline industry, negotiating international agreements, reviewing requests for the grant of anti-trust immunity for air carrier alliance agreements, selecting new international routes, selecting U.S. carriers to operate limited entry foreign routes, and modeling the spread of contagious diseases. The Passenger Origin-Destination Survey Report is the only aviation data collection by DOT where the air carriers report the true origins and destinations of passengers' flight itineraries. The Department does have another aviation data collection (T–100) which (1) gives passenger totals for city-pairs served on a nonstop basis and (2) market totals for passengers traveling on a single flight number. If the passenger travels on multiple flight numbers, a new market is recorded for each change in flight number.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: OST Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 9, 2016.

William Chadwick, Jr.,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 2016–19352 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal for a new Consolidated Reports of Condition and Income for Eligible Small Institutions (FFIEC 051). The proposed FFIEC 051 is a streamlined version of the existing Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041), which has been created by removing certain existing schedules and data items that would be replaced by a limited number of data items that would be collected in a new supplemental schedule, eliminating certain other existing data items, and reducing the reporting frequency of certain data items. The FFIEC 051 generally would be applicable to institutions with domestic offices only and assets of less than $1 billion. The FFIEC 041 would be applicable to institutions with domestic offices only that do not file the FFIEC 051. When compared to the existing FFIEC 041, the proposed FFIEC 051 shows a reduction in the number of pages from 85 to 61. This decrease is the result of the removal of approximately 950 or about 40 percent of the nearly 2,400 data items in the FFIEC 041.

In addition, the FFIEC and the agencies are seeking public comment on proposed revisions to the FFIEC 041 and the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), which are currently approved collections of information. The Consolidated Reports of Condition and Income are commonly referred to as the Call Report.

The proposed FFIEC 051 and the revisions to the FFIEC 041 and FFIEC 031 would take effect as of the March 31, 2017, report date. At the end of the comment period for this notice, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposal for the FFIEC 051 and the revisions to the FFIEC 041 and FFIEC 031 prior to giving final approval. As required by the PRA, the agencies will then publish a second **Federal Register** notice for a 30-day comment period and submit the final FFIEC 051, FFIEC 041, and FFIEC 031 to OMB for review and approval.

DATES: Comments must be submitted on or before October 14, 2016.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Because paper mail in the Washington, DC, area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible, to *prainfo@occ.treas.gov*. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: "1557–0081, FFIEC 031, 041, and 051," 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Board: You may submit comments, which should refer to "FFIEC 031, FFIEC 041, and FFIEC 051," by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the reporting form numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert DeV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, which should refer to "FFIEC 031, FFIEC 041, and FFIEC 051," by any of the following methods:

- *Agency Web site: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC's Web site.
- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: comments@FDIC.gov.* Include "FFIEC 031, FFIEC 041, and FFIEC 051" in the subject line of the message.
- *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the Call Report discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the Call Report forms and the proposed FFIEC 051 can be obtained at the FFIEC's Web site (*https://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Kevin Korzeniewski, Senior Attorney, (202) 649–5490, or for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to create a new Call Report for eligible small institutions, the foundation for which is a currently approved collection of information for each agency. In addition, the agencies are proposing revisions to data items reported on the FFIEC 041 and FFIEC 031 Call Reports.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Numbers: FFIEC 051 (proposed for eligible small institutions), FFIEC 041 (for banks and savings associations with domestic offices only), and FFIEC 031 (for banks and savings associations with domestic and foreign offices).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Control No.: 1557–0081.

Estimated Number of Respondents: 1,412 national banks and federal savings associations.

Estimated Average Burden per Response: 58.70 burden hours per quarter to file.

Estimated Total Annual Burden: 331,538 burden hours to file.

Board

OMB Control No.: 7100–0036.

Estimated Number of Respondents: 839 state member banks.

Estimated Average Burden per Response: 59.23 burden hours per quarter to file.

Estimated Total Annual Burden: 198,776 burden hours to file.

FDIC

OMB Control No.: 3064–0052.

Estimated Number of Respondents: 3,891 insured state nonmember banks and state savings associations.

Estimated Average Burden per Response: 43.89 burden hours per quarter to file.

Estimated Total Annual Burden: 683,104 burden hours to file.

The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The agencies' burden estimates for the Call Report include the estimated time for gathering and maintaining data in the required form and completing those Call Report data items for which an institution has a reportable (nonzero) amount. However, with respect to the time for reviewing instructions, the burden estimates generally include review time associated with those schedules and data items for which the institution has reportable amounts and do not include review time applicable to data items for which the institution determines, upon instructional review, that it does not have reportable amounts. As provided in the PRA, burden estimates exclude the time for compiling and maintaining business records in the normal course of an institution's activities.

Type of Review: Revision and extension of currently approved collections.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (for federal and state savings associations). At present, except for selected data items and text, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data serve a regulatory or public policy purpose by assisting the agencies in fulfilling their missions of ensuring the safety and soundness of financial institutions and the financial system and the protection of consumer financial rights, as well as agency-specific missions affecting national and state-chartered institutions, *e.g.,* monetary policy, financial stability, and deposit insurance. Call Reports are the source of the most current statistical data available for identifying areas of focus for on-site and off-site examinations. The agencies use Call Report data in evaluating institutions' corporate applications, including, in particular, interstate merger and acquisition applications for which, as required by law, the agencies must determine whether the resulting institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate institutions' deposit insurance and Financing Corporation assessments and national banks' and federal savings associations' semiannual assessment fees.

Current Actions

I. Introduction

As the result of a formal initiative launched by the FFIEC in December 2014 to identify potential opportunities to reduce burden associated with Call Report requirements for community banks, the agencies are proposing a new streamlined Call Report (FFIEC 051) for eligible small institutions and revisions to the existing versions of the Call Report (FFIEC 041 and FFIEC 031). In embarking on this effort, the FFIEC is responding to industry concerns about the cost and burden associated with the Call Report. The FFIEC's formal initiative includes actions in five areas,[1] three of which have served as the foundation for the proposed FFIEC 051. These three actions, discussed below, include community bank outreach, surveys of agency Call Report data users, and consideration of a more streamlined Call Report for eligible small institutions. In addition, as a framework for the actions it is undertaking, the FFIEC developed a set of guiding principles for use in evaluating potential additions and deletions of Call Report data items and other revisions to the Call Report. In general, data items collected in the Call Report must meet three guiding principles: (1) The data items serve a long-term regulatory or public policy purpose by assisting the FFIEC member entities in fulfilling their missions of ensuring the safety and soundness of financial institutions and the financial system and the protection of consumer financial rights, as well as agency-specific missions affecting national and state-chartered institutions; (2) the data items to be collected maximize practical utility and minimize, to the extent practicable and appropriate, burden on financial institutions; and (3) equivalent data items are not readily available through other means.

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[1] See 80 FR 56539 (September 18, 2015) and 81 FR 45357 (July 13, 2016) for information on other actions taken under this initiative.

II. FFIEC's Community Bank Call Report Burden-Reduction Initiative

A. Community Bank Outreach

As one of the actions under the FFIEC's community bank Call Report burden-reduction initiative, the agencies conducted and participated in several outreach efforts to better understand, through industry dialogue, the aspects of reporting institutions' Call Report process that are significant sources of reporting burden, including where manual intervention by an institution's staff is necessary to report particular information. As an initial step toward improving this understanding, representatives from the FFIEC member entities visited nine community institutions during the third quarter of 2015. In the first quarter of 2016, two bank trade groups, the Independent Community Bankers of America and the American Bankers Association, each organized a number of conference call meetings with small groups of community bankers in which representatives from the FFIEC member entities participated. During the visits to banks and the conference call meetings, the community bankers explained how they prepare their Call Reports, identified which schedules or data items take a significant amount of time and/or manual processes to complete, and described the reasons for this. The bankers also offered suggestions for streamlining the Call Report.

The agencies note that during the banker outreach calls, as well as in comment letters submitted under a review of agency regulations required by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA),[2] they received many comments about the burden of reporting in accordance with the revised regulatory capital rules in Call Report Schedule RC–R—Regulatory Capital. The agencies revised this schedule in March 2015 to include the data items that would be necessary for an institution to calculate its regulatory capital ratios under the revised capital rules. The greater detail of those rules requires a degree of categorization, recordkeeping, and reporting that is greater than under the prior applicable capital rules. The FFIEC, through its Task Force on Reports (task force), is monitoring the banking agencies' response to the concerns about the revised regulatory capital rules raised during the EGRPRA comment process and the associated reporting burden of Schedule RC–R arising from the implementation of those rules by community banks.

The agencies also note that during the banker outreach calls and visits, they received many comments addressing the substantive burden arising from reviewing the Call Report instructions on a quarterly or other periodic basis even for those data items applicable to an institution for which the institution determines that there is no information for it to report. As noted previously, the agencies' burden estimates for the Call Report include estimated time for reviewing instructions, gathering and maintaining data in the required form, and completing those Call Report data items for which an institution has a reportable (nonzero) amount. Consistent with past practice, the agencies' burden estimates do not reflect burden associated with an institution's time for reviewing the instructions for applicable data items for which an institution does not have reportable amounts. Therefore, the agencies' burden estimates do not reflect the burden reduction associated with an institution no longer having to review the instructions for those applicable data items without reportable amounts that the agencies are proposing to remove from the Call Report. Further, as noted previously, the estimated burden per response is an average estimate for all filers of the Call Report. This estimate does not separately distinguish between the FFIEC 031, FFIEC 041, and the proposed FFIEC 051 versions of the Call Report. The agencies will consider revising the methodology for estimating burden hours and preparing separate burden estimates for the FFIEC 031, FFIEC 041, and FFIEC 051 reports.

B. Acceleration of the Statutorily Mandated Review of the Call Report

As a second action, the agencies accelerated the start of the next statutorily mandated review of the existing Call Report data items (Full Review),[3] which otherwise would have commenced in 2017. Users of Call Report data items at the FFIEC member entities are participating in a series of nine surveys conducted over a 19-month period that began in mid-July 2015. As an integral part of these surveys, users are asked to fully explain the need for each Call Report data item they deem essential, how the data item is used, the frequency with which it is needed, and the population of institutions from which it is needed. Call Report schedules have been placed into nine groups and prioritized for review, generally based on level of burden cited by banking industry representatives. Based on the results of the surveys, the agencies are identifying data items that are being considered for elimination, less frequent collection, or new or upwardly revised reporting thresholds. The results of the first three surveys have been incorporated into this proposal. Burden-reducing reporting changes from the remaining six surveys will be proposed in future **Federal Register** notices with an anticipated March 31, 2018, implementation date.

C. Consideration of a More Streamlined Call Report for Eligible Small Institutions

As a third action, the agencies considered the feasibility and merits of creating a less burdensome version of the quarterly Call Report for institutions that meet certain criteria. Together with the outcomes of the preceding two actions to date, the results of this action are the subject of this proposal, *i.e.*, the FFIEC 051 Call Report for eligible small institutions, which is summarized in Section III, Overview of the Current Proposal, below.

III. Overview of the Current Proposal

Under the auspices of the FFIEC and its task force, the agencies collectively reviewed the feedback from the previously mentioned banker outreach efforts completed in 2015 and 2016 as one of the inputs for developing a proposal to address industry concerns about the regulatory reporting burden imposed on institutions by the Call Report. In addressing these concerns, the agencies aimed to balance institutions' requests for a less burdensome regulatory reporting process with FFIEC member entities' need for sufficient data to monitor the condition and performance of, and ensure the safety and soundness of, institutions and carry out agency-specific missions. With these two goals in mind, the task force developed, and the FFIEC and the agencies agreed to propose, a separate, more streamlined, and noticeably shorter Call Report to be completed by eligible small institutions as well as certain burden-reducing revisions to the current FFIEC 041 and FFIEC 031 versions of the Call Report. The agencies recognize that institutions operate under widely varying business models, which affects the nature and extent of their activities and translates into differences in the amount of information to be reported in their Call Reports.

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[2] EGRPRA requires the federal banking agencies to conduct a decennial joint review of their regulations to identify those that are outdated, unnecessary, or unduly burdensome.

[3] This review is mandated by section 604 of the Financial Services Regulatory Relief Act of 2006 (12 U.S.C. 1817(a)(11)).

For purposes of the FFIEC 051 Call Report, the agencies propose to define "eligible small institutions" as institutions with total assets less than $1 billion and domestic offices only.[4] These institutions currently file the FFIEC 041 Call Report. Eligible small institutions would have the option to file the FFIEC 041 Call Report rather than the FFIEC 051. In addition, for a small institution otherwise eligible to file the FFIEC 051, the institution's primary federal regulatory agency, jointly with the state chartering authority, if applicable, may require the institution to file the FFIEC 041 instead based on supervisory needs. In determining whether an institution with less than $1 billion in total assets should be required to file the FFIEC 041 rather than the FFIEC 051, the appropriate agency will consider criteria including, but not limited to, whether the eligible institution is significantly engaged in complex, specialized, or other high-risk activities.[5] It is anticipated that such determinations would be made in a limited number of cases.

The existing Call Report instructions generally provide that shifts in an institution's reporting status are to begin with the March Call Report based on the institution's consolidated total assets as reported in the Call Report for June of the previous calendar year. Applying this principle to the FFIEC 051, an institution with domestic offices only would be eligible to file the FFIEC 051 Call Report beginning as of its proposed effective date of March 31, 2017, if it reported consolidated total assets of less than $1 billion in its Call Report for June 30, 2016.

Thereafter, if the total assets of an institution with domestic offices only that files the FFIEC 051 Call Report increase to $1 billion or more as of a June 30 report date, it would no longer be eligible to file the FFIEC 051 Call Report beginning as of the March 31 report date the following year. The institution would instead begin to file the FFIEC 041 report.[6]

In developing the proposed FFIEC 051 for eligible small institutions, the data items currently collected in the FFIEC 041, including individual schedules, were reviewed to determine how the existing reporting requirements could be modified to make the information in the Call Report more applicable to and less burdensome for smaller, noncomplex institutions without adversely affecting FFIEC member entities' data needs. As a result of this interagency review, the following changes were made to the FFIEC 041 report form to create the proposed FFIEC 051 and are discussed in detail in Sections IV.A through IV.D below and in Appendix A:

- The addition of a Supplemental Schedule to collect indicator questions and indicator data items on certain complex and specialized activities, as discussed in section IV.A below, as a basis for removing partial or entire schedules (and other related items) which are currently included in the FFIEC 041;
- The elimination of data items identified as no longer necessary for collection from institutions with less than $1 billion in total assets and domestic offices only during the completed portions of the Full Review or during a separate interagency review that focused on data items infrequently reported by institutions of this size;
- Changes to the frequency of data collection for certain items identified as needed less often than quarterly from institutions with less than $1 billion in total assets and domestic offices only; and
- Removal of all data items for which a $1 billion asset-size reporting threshold currently exists.

In addition, the agencies plan to prepare a separate, shorter set of Instructions for Preparation of Consolidated Reports of Condition and Income for users of the FFIEC 051, which would be published by the beginning of the quarterly reporting period in which the FFIEC 051 takes effect.

In designing the proposed FFIEC 051 Call Report, the agencies have sought to maintain, to the extent possible, the existing structure of the FFIEC 041 Call Report, including the numbering and sequencing of data items within Call Report schedules. Institutions and their staff members involved in the preparation of the Call Report are familiar with how the FFIEC 041 Call Report is currently organized. Feedback from banker outreach activities indicated that they did not favor the rearranging of existing data items that would be retained in a streamlined Call Report for small institutions because the need to adapt to these structural changes would itself be burdensome.

As noted above, the statutorily mandated review of the existing Call Report data items is an ongoing process. The agencies have included certain proposed revisions to the existing FFIEC 031 and FFIEC 041 Call Reports based on the task force's evaluation of the results of the first three surveys of Call Report users at FFIEC member entities are included in this notice (see Section V below). Additional changes to the FFIEC 031, the FFIEC 041, and the FFIEC 051 will be proposed in future **Federal Register** notices after the conclusion of the remaining user surveys.

The agencies invite comment on any difficulties that institutions would expect to encounter in implementing the systems and process changes necessary to accommodate the proposed FFIEC 051 and the proposed revisions to the FFIEC 041 and FFIEC 031.

In addition, the agencies invite comment on the estimated lead time necessary for institutions to be properly prepared for reporting on the proposed FFIEC 051 Call Report, and the revised FFIEC 041 and FFIEC 031 Call Reports, and whether the proposed March 31, 2017, implementation date for these reporting changes provides sufficient time.

The specific wording of the captions for the new or revised Call Report data items and schedule titles discussed in this proposal and the numbering of these data items should be regarded as preliminary.

IV. Discussion of Proposed Call Report Revisions To Create the FFIEC 051

A. Replacement of Partial or Entire Schedules With a Supplemental Schedule

The FFIEC 041 Call Report schedules requiring the reporting of data on activities considered complex or specialized were identified and reviewed to determine which schedules (or portions of schedules) could be eliminated from the FFIEC 051 and replaced with questions asking whether the institution engages in any of these complex or specialized activities along with corresponding indicator data items that would be completed for those activities in which the institution engages. The indicator data items would provide aggregate data specific to the identified complex or specialized activity, allowing users of the Call Report at FFIEC member entities to ascertain the degree to which an institution engages in such activity. The following is a list of the identified schedules and activities along with the related proposed indicator questions and data items that would be included in a new Schedule SU in the FFIEC 051 Call Report:

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[4] As part of this initiative, the agencies are committed to exploring alternatives to the $1 billion asset-size threshold that could extend the eligibility to file the FFIEC 051 to additional institutions.

[5] This proposed reservation of authority is consistent with the reservation of authority applicable to a holding company with consolidated total assets of less than $1 billion that would otherwise file the Board's FR Y–9SP, Parent Company Only Financial Statements for Small Holding Companies (OMB Control No. 7100–0128). See page GEN–1 of the instructions for the FR Y–9SP.

[6] Consistent with the existing Call Report instructions, if an institution reaches $1 billion or more in consolidated total assets due to a business combination, a transaction between entities under common control, or a branch acquisition that is not a business combination, then the institution must file the FFIEC 041 Call Report beginning with the first quarter-end report date following the effective date of the transaction.

- *Derivatives* data currently collected on Schedule RC–L—Derivatives and Off-Balance Sheet Items and in certain other schedules would be eliminated from the FFIEC 051 (except from Schedule RC–R—Regulatory Capital) and replaced with the following indicator question and data items:
  - Does the institution have any derivative contracts? (If yes, complete the following items.)
  - Total gross notional amount of interest rate derivatives held for trading
  - Total gross notional amount of all other derivatives held for trading
  - Total gross notional amount of interest rate derivatives not held for trading
  - Total gross notional amount of all other derivatives not held for trading
- *Schedule RC–D—Trading Assets and Liabilities* would be eliminated from the FFIEC 051. Indicator questions and data items are not necessary because total trading assets and total trading liabilities are reported on Schedule RC—Balance Sheet.
- *Schedule RC–P—1–4 Family Residential Mortgage Banking Activities* would be eliminated from the FFIEC 051 and replaced with the following indicator question and data items:
  - For the two calendar quarters preceding the current calendar quarter, have either the institution's sales of 1–4 family residential mortgage loans during the quarter or its 1–4 family residential mortgage loans held for sale or trading as of quarter-end exceeded $10 million? (If yes, complete the following items.)
  - Principal amount of 1–4 family residential mortgage loans sold during the quarter
  - Quarter-end amount of 1–4 family residential mortgage loans held for sale or trading
- *Schedule RC–Q—Assets and Liabilities Measured at Fair Value on a Recurring Basis* would be eliminated from the FFIEC 051 and replaced with the following indicator question and data items:
  - Does the institution use the fair value option to measure any of its assets or liabilities? (If yes, complete the following items.)
  - Aggregate amount of fair value option assets
  - Aggregate amount of fair value option liabilities
  - Year-to-date net gains (losses) recognized in earnings on fair value option assets
  - Year-to-date net gains (losses) recognized in earnings on fair value option liabilities
- *Schedule RC–S—Servicing, Securitization, and Asset Sale Activities* would be eliminated from the FFIEC 051 and replaced with the following indicator questions and data items:
  - Does the institution have any assets it has sold and securitized with servicing retained or with recourse or other seller-provided credit enhancements? (If yes, complete the following item.)
  - Total outstanding principal balance of assets sold and securitized by the reporting institution with servicing retained or with recourse or other seller-provided credit enhancements
  - Does the institution have any assets it has sold with recourse or other seller-provided credit enhancements but has not securitized? (If yes, complete the following item.)
  - Total outstanding principal balance of assets sold by the reporting institution with recourse or other seller-provided credit enhancements, but not securitized by the reporting institution
  - Does the institution service any closed-end 1–4 family residential mortgage loans for others or does it service more than $10 million of other financial assets for others? (If yes, complete the following item.)
  - Total outstanding principal balance of closed-end 1–4 family residential mortgage loans serviced for others plus the total outstanding principal balance of other financial assets serviced for others if more than $10 million

To note, the item related to the credit card fees and finance charges will be addressed in the *Credit Card Lending Specialized Items* section, below.

- *Schedule RC–V—Variable Interest Entities* would be eliminated from the FFIEC 051 and replaced with the following indicator question and data items:
  - Does the institution have any consolidated variable interest entities? (If yes, complete the following items.)
  - Total assets of consolidated variable interest entities
  - Total liabilities of consolidated variable interest entities
- *Credit Card Lending Specialized Items* included in Schedule RI–B—Charge-offs and Recoveries on Loans and Leases and Changes in Allowance for Loan and Lease Losses; Schedule RC–C—Loans and Lease Financing Receivables; and Schedule RC–S—Servicing, Securitization, and Asset Sale Activities would be replaced with the following indicator question and data items:
  - Does the institution, together with affiliated institutions, have outstanding credit card receivables that exceed $500 million as of the report date or is the institution a credit card specialty bank as defined for Uniform Bank Performance Report (UBPR) purposes? (If yes, complete the following items.)
  - Outstanding credit card fees and finance charges included in credit cards to individuals for household, family, and other personal expenditures (retail credit cards)
  - Separate valuation allowance for uncollectible retail credit card fees and finance charges
  - Amount of allowance for loan and lease losses attributable to retail credit card fees and finance charges
  - Uncollectible retail credit card fees and finance charges reversed against year-to-date income
  - Outstanding credit card fees and finance charges included in retail credit card receivables sold and securitized with servicing retained or with recourse or other seller-provided credit enhancements
- *FDIC Loss-Sharing Agreement* data items included in Schedule RC–M—Memoranda, and Schedule RC–N—Past Due and Nonaccrual Loans, Leases, and Other Assets would be eliminated from the FFIEC 051 and replaced with the following indicator question and data items:
  - Does the institution have assets covered by FDIC loss-sharing agreements? (If yes, complete the following items.)
  - Loans and leases covered by FDIC loss-sharing agreements
  - Past due and nonaccrual loans and leases covered by FDIC loss-sharing agreements, with separate reporting of loans and leases past due 30–89 days and still accruing, loans and leases past due 90 days or more and still accruing, and nonaccrual loans and leases
  - Portion of past due and nonaccrual covered loans and leases protected by FDIC loss-sharing agreements, with separate reporting of loans and leases past due 30–89 days and still accruing, loans and leases past due 90 days or more and still accruing, and nonaccrual loans and leases
  - Other real estate owned covered by FDIC loss-sharing agreements

○ Portion of covered other real estate owned that is protected by FDIC loss-sharing agreements

B. Elimination of Data Items Identified During the Statutorily Mandated Full Review of the Call Report and the Review of Infrequently Reported Items

As discussed above, several of the existing Call Report schedules have been reviewed as part of the Full Review of the Call Report. The resulting burden-reducing changes relevant to institutions with less than $1 billion in total assets and domestic offices only have been incorporated into the proposed FFIEC 051. The schedules reviewed to date include:

- Schedule RI—Income Statement
- Schedule RC—Balance Sheet
- Schedule RC–C—Loans and Lease Financing Receivables
- Schedule RI–B—Charge-offs and Recoveries on Loans and Leases and Changes in Allowance for Loan and Lease Losses
- Schedule RC–N—Past Due and Nonaccrual Loans, Leases, and Other Assets
- Schedule RC–E—Deposit Liabilities
- Schedule RC–O—Other Data for Deposit Insurance and FICO Assessments

This proposal also includes revisions to some of these schedules in the FFIEC 041 and FFIEC 031 Call Reports as a result of the Full Review (see Section V). Going forward, the data items in all other Call Report schedules will continue to be evaluated as part of the Full Review.

As another component of this initiative, data items infrequently reported in the FFIEC 041 Call Report by banks with total assets less than $1 billion and domestic offices only were reviewed by the FFIEC member entities to determine which of these items remain necessary for monitoring the safety and soundness of, and meeting agency mission-specific needs with respect to, such smaller, less complex institutions. Of these data items, those deemed no longer essential were excluded from the FFIEC 051.

In the proposed FFIEC 051 Call Report, the following schedules would have data items removed as a result of the completed portions of the statutorily mandated Full Review or the review of infrequently reported items (see Appendix A for complete listing of all data items removed on the March 31, 2016, FFIEC 041 Call Report):

- Schedule RI—Income Statement
- Schedule RI–B—Charge-offs and Recoveries on Loans and Leases and Changes in Allowance for Loan and Lease Losses
- Schedule RC–C—Loans and Lease Financing Receivables
- Schedule RC–E—Deposit Liabilities
- Schedule RC–L—Derivatives and Off-Balance Sheet Items
- Schedule RC–N—Past Due and Nonaccrual Loans, Leases, and Other Assets

The agencies note that during the previously mentioned banker outreach efforts, some community banks specifically cited Schedule RC–C, Part I—Loans and Leases, as a particularly burdensome schedule to complete. Many of these banks also indicated that completing this schedule requires a significant degree of manual intervention.

As discussed above, Call Report data serve a regulatory or public policy purpose by assisting the FFIEC member entities in fulfilling their missions of ensuring the safety and soundness of financial institutions and the financial system and the protection of consumer financial rights, as well as agency-specific missions. These agency needs are particularly evident for data collected on Schedule RC–C, Part I.

Loan and lease data are critical inputs to assessing the safety and soundness of financial institutions through analysis of the institutions' management of credit risk, interest rate risk, and liquidity risk, including the analysis of lending concentrations and earnings. Further, standardization of loan categories across the schedules within the Call Report is essential for peer group analysis and industry analysis. Loan and lease information is also an important component of agency statistical models that assess the risk profile of an institution, including its risk of failure.

Finally, loan and lease information assists the agencies in fulfilling their specific missions. The Federal Reserve, as part of its monetary policy mission, relies on institution-specific Call Report data to provide information on credit availability and lending conditions not available elsewhere. Loan and lease detail at all sizes of institutions are necessary for policymaking purposes addressing the overall health of the economy.

In general, monetary policy initiatives function most effectively when implemented early during a period of credit constraint, with the responses tailored to the types of institutions affected, using standardized loan information only available from Call Reports. Reducing loan detail or data frequency for smaller institutions could potentially derail these efforts by delaying the identification of the start of an economic downturn as well as determinations of the effectiveness of any monetary policy changes. Furthermore, Schedule RC–C, Part I, data are used to benchmark weekly loan data collected from a sample of both small and large institutions that are the source for estimating weekly loan aggregates that serve as a more timely and critical input for monetary policymaking purposes.

The FDIC's deposit insurance assessment system for "established small banks" relies on information reported by individual institutions for the Schedule RC–C, Part I, standardized loan categories in the determination of the loan mix index in the financial ratios method, as recently amended, which is used to determine assessment rates for such institutions.[7]

Notwithstanding the above discussion of the agencies overall needs for information collected on Schedule RC–C, Part I, the agencies have identified 23 data items as having lesser utility for these purposes. The specific data items proposed to be removed from the FFIEC 041 report in creating the FFIEC 051 report are listed in Appendix A.

C. Changes to the Frequency of Data Collection

The FFIEC member entities have reviewed existing data items in the FFIEC 041 Call Report that would be retained in the FFIEC 051 to determine whether some of these data items could be collected less frequently than quarterly from eligible small institutions without adversely affecting the agencies' data needs. Data items would be collected in the FFIEC 051 on a less than quarterly basis if they are deemed not necessary for quarterly collection for a supervisory, surveillance, monitoring, or agency mission-specific purpose relevant to institutions with total assets of less than $1 billion and domestic offices only.

The following Call Report schedules in the proposed FFIEC 051 would have data items that have had a change in the frequency of data collection from quarterly to semiannually or annually (see Appendix A for a list of the affected data items):

- Schedule RI—Income Statement
- Schedule RC–B—Securities
- Schedule RC–A—Cash and Balances Due from Depository Institutions
- Schedule RC–C—Loans and Lease Financing Receivables
- Schedule RC–F—Other Assets
- Schedule RC–G—Other Liabilities
- Schedule RC–L—Derivatives and Off-Balance Sheet Items

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[7] See 81 FR 323186–32188 and 32208 (May 20, 2016).

- Schedule RC–M—Memoranda
- Schedule RC–N—Past Due and Nonaccrual Loans, Leases, and Other Assets

The agencies note that during the previously mentioned banker outreach efforts, some community banks specifically cited Schedule RC–C, Part II—Loans to Small Businesses and Small Farms, as a particularly burdensome schedule to complete. Many of these banks also indicated that their reported values on this schedule did not vary significantly from quarter to quarter, and inquired whether the reporting frequency could be reduced to annual or semiannual.

In 2010, the FFIEC changed the reporting frequency for Schedule RC–C, Part II, from annually to quarterly. Call Report small business and small farm lending data are an invaluable resource for understanding credit conditions facing small businesses. More frequent collection of these data improves the Board's ability to monitor credit conditions facing small businesses and small farms and significantly contributes to its ability to develop policies intended to address any problems that arise in credit markets. In 2009, the U.S. Department of the Treasury, also identified a particular need for these data as they worked to develop policies to ensure that more small businesses and small farms would have access to credit.[8] In addition, the Board finds these data very valuable for monetary policymaking purposes.

The institution-level Call Report data provide information that cannot be obtained from other indicators of small business and small farm credit conditions. The agencies' other indicators of small business credit conditions—including the Board's Senior Loan Officer Opinion Survey[9] and its Flow of Funds—do not provide the same level of detail that is available from Call Reports, and therefore cannot be used to answer many questions that naturally arise during the policy development process. For example, during a period of credit contraction, these other data sources cannot be used to identify which types of institutions are reducing the volume of their loans to small businesses and small farms. This is a significant constraint for the Board, as having detailed information about the characteristics of affected institutions is crucial to designing well-targeted and effective policy responses. Moreover, there is evidence that small business lending by small institutions does not correlate with lending by larger institutions.

Monetary policymaking benefits importantly from more timely information on small business credit conditions and flows. To determine how best to adjust the federal funds rates over time, the Board must continuously assess the prospects for real activity and inflation in coming quarters. Credit conditions have an important bearing on the evolution of those prospects over time, and so the Board pays close attention to data from Call Reports and other sources. In trying to understand the implications of aggregate credit data for the macroeconomic outlook, it is helpful to be able to distinguish between conditions facing small firms and those affecting other businesses, for several reasons. First, small businesses comprise a substantial portion of the nonfinancial business sector, and so their hiring and investment decisions have an important influence on overall real activity.[10] Second, because small businesses tend to depend more heavily on depository institutions for external financing, they likely experience material swings in their ability to obtain credit relative to larger firms. Third, the relative opacity of small businesses and their consequent need to provide collateral for loans is thought to create a "credit" channel for monetary policy to influence real activity. Specifically, changes in monetary policy may alter the value of assets used as collateral for loans, thereby affecting the ability of small businesses to obtain credit, abstracting from the effects of any changes in loan rates. Finally, the credit conditions facing small businesses and small farms differ substantially from those facing large businesses, making it necessary to collect indicators that are specific to these borrowers. Large businesses may access credit from a number of different channels, including the corporate bond market and the commercial paper market. In contrast, small businesses and small farms rely more heavily on credit provided through the depository institution lending channel. The dependence of small businesses and small farms on bank lending—particularly from smaller institutions—magnifies the importance of Call Report data, which provide the most comprehensive data on depository institution lending to small businesses and small farms, and emphasizes the importance of collecting quarterly data from institutions of all sizes.

In response to feedback received from banker outreach efforts conducted by the FFIEC member entities, where a sample of community banks indicated that data reported on Call Report Schedule RC–C, Part II, does not vary significantly from quarter to quarter, the Board examined the quarter-to-quarter variation in the Call Report data on small loans to businesses and small loans to farms since 2010. Although some individual banks may see little variation over time in these Call Report items, the aggregate data for community banks do vary enough from quarter to quarter to make a difference in the Board's sense of what is happening with regard to aggregate credit availability to small businesses, which is a very important sector of the economy. During a downturn, this variability is likely to increase. However, the Board recognizes that the very smallest institutions—those with less than $50 million in total assets—did not contribute significantly to the quarterly variation. Therefore, the agencies propose to change the frequency of reporting Schedule RC–C, Part II, in the FFIEC 051 from quarterly to semiannually for banks with less than $50 million in total assets.

Some proponents of reduced reporting frequency for Schedule RC–C, Part II, have suggested that the agencies could tie the frequency of reporting to the business cycle, with lower frequency (annually or semiannually) during normal or expansionary times, and quarterly frequency during a downturn. The agencies do not consider this approach to be feasible because they generally cannot anticipate a downturn before it starts, and once it has been determined that a downturn is under way, there would be an inevitable lag in implementing the quarterly reporting requirement. Furthermore, declines in small business and small farm lending may precede a downturn in economic activity and serve as a leading indicator of such a downturn, providing useful information to the agencies for policymaking purposes.

D. Removal of Data Items for Which a Reporting Threshold Currently Exists

The proposed FFIEC 051 would not include those FFIEC 041 Call Report data items for which a reporting threshold currently exists that creates an exemption from reporting for banks with total assets less than $1 billion. The following schedules were affected by the removal of these data items (as shown on the marked March 31, 2016,

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[8] See 74 FR 41973 (August 19, 2009).

[9] See FR 2018; OMB No. 7100–0058.

[10] Based on statistics tabulated early in the decade, roughly one quarter of all nonfinancial business assets were outside the corporate sector, and such firms tend to be partnerships and proprietorships, which tend to be small businesses.

FFIEC 041 form posted on the FFIEC's Web site):[11]

- Schedule RI—Income Statement
- Schedule RI–C—Disaggregated Data on the Allowance for Loan and Lease Losses
- Schedule RC–B—Securities
- Schedule RC–E—Deposit Liabilities
- Schedule RC–L—Derivatives and Off-Balance Sheet Items
- Schedule RC–O—Other Data for Deposit Insurance and FICO Assessments

E. Preparation of Separate Instructions for the FFIEC 051

As noted in Section III, the FFIEC and the agencies will be creating a separate set of Instructions for Preparation of Consolidated Reports of Condition and Income (FFIEC 051). A combined set of instructions for the FFIEC 031 and the FFIEC 041 Call Reports will still be maintained. Instructions for identical data items in the FFIEC 051 and the FFIEC 041 generally would reflect the same text in both sets of instructions. Instructions for those FFIEC 041 data items that are not included in the FFIEC 051 would be excluded from the instructions for the FFIEC 051. Glossary entries in the instructions for the FFIEC 041 that are not relevant to the FFIEC 051 also would be excluded from the FFIEC 051 instructions. Instructions would be added to the FFIEC 051 instructions for the indicator questions and data items in the proposed Supplemental Schedule.

F. Shifts in Reporting Status

The Call Report instructions presently provide that once an institution reaches or exceeds a specified total asset or other reporting threshold that requires the reporting of additional information in the Call Report, the institution must continue to report the additional information in subsequent years without regard to whether it later falls below reporting threshold. To reduce reporting burden, the agencies are proposing to revise these instructions on reporting thresholds. Accordingly, if an institution's consolidated total assets or activity level subsequently fall to less than the applicable asset or activity threshold for four consecutive quarters, the institution may cease reporting the data items to which the threshold applies for all reporting thresholds in the FFIEC 031 and FFIEC 041 (and proposed FFIEC 051) Call Reports unless the institution exceeds the threshold as of a subsequent June 30 report date.

V. Proposed Changes to the FFIEC 031 and FFIEC 041

In addition to the creation of the FFIEC 051, this proposal also includes proposed revisions to some of the schedules in the FFIEC 041 and FFIEC 031 Call Reports as a result of the first three agency user surveys conducted under the Full Review. Going forward, the data items in all other Call Report schedules will continue to be evaluated as part of the Full Review.

The following schedules in the FFIEC 041 and FFIEC 031 versions of the Call Report would have data items removed or subject to new or higher reporting thresholds as a result of the statutorily mandated Full Review (see Appendices B and C for a complete listing of the affected data items on the March 31, 2016, FFIEC 041 and FFIEC 031 Call Reports):

- Schedule RI—Income Statement
- Schedule RI–B—Charge-offs and Recoveries on Loans and Leases and Changes in Allowance for Loan and Lease Losses
- Schedule RC–C—Loans and Lease Financing Receivables
- Schedule RC–E—Deposit Liabilities
- Schedule RC–M—Memoranda
- Schedule RC–N—Past Due and Nonaccrual Loans, Leases, and Other Assets

In addition, the proposed change governing shifts in reporting status outlined in Section IV.F would also be applicable to institutions that file the FFIEC 031 and FFIEC 041 Call Reports.

VI. Request for Comment

Public comment is requested on all aspects of this joint notice. Comment is specifically invited on:

(a) What is the appropriate amount of lead time eligible small institutions would need to change their systems and processes from reporting using the FFIEC 041 to reporting using the proposed FFIEC 051 and whether the agencies should delay the proposed initial implementation date of March 31, 2017;

(b) Whether or not institutions prefer the agencies' staggered approach to streamlining the Call Report for eligible small institutions that will introduce proposed changes in multiple steps during the course of the community bank Call Report burden-reduction initiative rather than waiting to incorporate all the proposed changes into a streamlined Call Report at once after the conclusion of the Full Review of the Call Report data items in 2017;

(c) Whether, as proposed, small institutions should have the option to complete the FFIEC 041 rather than being required to file the FFIEC 051 if eligible;

Comments also are invited on:

(d) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(e) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(f) Ways to enhance the quality, utility, and clarity of the information to be collected;

(g) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(h) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

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[11] *https://www.ffiec.gov/ffiec_report_forms.htm.*

Appendix A

Proposed FFIEC 051: Changes Made to the FFIEC 041

Schedules Replaced by Schedule SU – Supplemental Information:

Schedule RC-D – Trading Assets and Liabilities
Schedule RC-P – 1-4 Family Residential Mortgage Banking Activities
Schedule RC-Q – Assets and Liabilities Measured at Fair Value on a Recurring Basis
Schedule RC-S – Servicing, Securitization, and Asset Sale Activities
Schedule RC-V – Variable Interest Entities

Schedules impacted by a change in frequency of collection of data:

1. Schedule RC-C, Part II. Loans to Small Businesses and Small Farms - For institutions with less than $50 million in total assets, frequency of data collection will move to semiannual.
2. Schedule RC-A, Cash and Balances Due from Depository Institutions - Institutions with less than $300 million in total assets are already exempt from completing this schedule. For all other FFIEC 051 filers, frequency of data collection will move to semiannual.

Data Items Removed:

Schedule	Item	Item Name	MDRM Number
RI	1.a.(4)	Loans to foreign governments and official institutions	RIAD4056
RI	1.e	Interest income from trading assets	RIAD4069
RI	2.c	Interest on trading liabilities and other borrowed money	RIAD4185
RI	2.d	Interest on subordinated notes and debentures Note: Items 2.c and 2.d of Schedule RI will be combined into one data item for "Other interest expense."	RIAD4200
RI	5.c	Trading revenue	RIADA220
RI	5.e	Venture capital revenue	RIADB491
RI	M2	Income from the sale and servicing of mutual funds and annuities (included in Schedule RI, item 8)	RIAD8431
RI	M8.a	Interest rate exposures	RIAD8757
RI	M8.b	Foreign exchange exposures	RIAD8758
RI	M8.c	Equity security and index exposures	RIAD8759
RI	M8.d	Commodity and other exposures	RIAD8760
RI	M8.e	Credit exposures	RIADF186
RI	M8.f	Impact on trading revenue of changes in the creditworthiness of the bank's derivatives counterparties on the bank's derivative assets (included in Memorandum items 8.a through 8.e above)	RIADK090
RI	M8.g	Impact on trading revenue of changes in the creditworthiness of the bank on the bank's derivative liabilities (included in Memorandum items 8.a through 8.e above).	RIADK094
RI	M9.a	Net gains (losses) on credit derivatives	RIADC889

Schedule	Item	Item Name	MDRM Number
		held for trading	
RI	M9.b	Net gains (losses) on credit derivatives held for purposes other than trading	RIADC890
RI	M10	Credit losses on derivatives	RIADA251
RI	M13.a	Net gains (losses) on assets	RIADF551
RI	M13.a.(1)	Estimated net gains (losses) on loans attributable to changes in instrument-specific credit risk	RIADF552
RI	M13.b	Net gains (losses) on liabilities	RIADF553
RI	M13.b.(1)	Estimated net gains (losses) on liabilities attributable to changes in instrument-specific credit risk	RIADF554
RI	M15.a	Consumer overdraft-related service charges levied on those transaction account and non-transaction savings account deposit products intended primarily for individuals for personal, household, or family use	RIADH032
RI	M15.b	Consumer account periodic maintenance charges levied on those transaction account and non-transaction savings account deposit products intended primarily for individuals for personal, household, or family use	RIADH033
RI	M15.c	Consumer customer automated teller machine (ATM) fees levied on those transaction account and non-transaction savings account deposit products intended primarily for individuals for personal, household, or family use	RIADH034
RI	M15.d	All other service charges on deposit accounts	RIADH035
RI-B, Part I	2	Loans to depository institutions and acceptances of other banks (Columns A and B)	RIAD4481, RIAD4482
RI-B, Part I	6	Loans to foreign governments and official institutions (Columns A and B)	RIAD4643, RIAD4627
RI-B, Part I	M2.a	Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RI-B, part I, item 1, above) (Columns A and B)	RIAD4652, RIAD4662
RI-B, Part I	M2.b	Loans to and acceptances of foreign banks (included in Schedule RI-B, part I, item 2, above) (Columns A and B)	RIAD4654, RIAD4664
RI-B, Part I	M2.c	Commercial and industrial loans to non-U.S. addressees (domicile) (included in Schedule RI-B, part I, item 4, above) (Columns A and B)	RIAD4646, RIAD4618
RI-B, Part I	M2.d	Leases to individuals for household, family, and other personal expenditures (included in Schedule RI-B, part I, item 8, above) (Columns A and B)	RIADF185, RIADF187

Schedule	Item	Item Name	MDRM Number
RI-B, Part I	M4	Uncollectible retail credit card fees and finance charges reversed against income (i.e., not included in charge-offs against the allowance for loan and lease losses)	RIADC388
RI-B, Part II	M1	Allocated transfer risk reserve included in Schedule RI-B, part II, item 7, above	RIADC435
RI-B, Part II	M2	Separate valuation allowance for uncollectible retail credit card fees and finance charges	RIADC389
RI-B, Part II	M3	Amount of allowance for loan and lease losses attributable to retail credit card fees and finance charges	RIADC390
RI-C	1.a	Construction loans (Columns A through F)	RCONM708, RCONM709, RCONM710,RCONM711, RCONM712,RCONM713
RI-C	1.b	Commercial real estate loans (Columns A through F)	RCONM714, RCONM715, RCONM716, RCONM717, RCONM719, RCONM720
RI-C	1.c	Residential real estate loans (Columns A through F)	RCONM721, RCONM722, RCONM723, RCONM724, RCONM725, RCONM726
RI-C	2	Commercial loans (Columns A through F)	RCONM727, RCONM728, RCONM729, RCONM730, RCONM731, RCONM732
RI-C	3	Credit cards (Columns A through F)	RCONM733, RCONM734, RCONM735, RCONM736, RCONM737, RCONM738
RI-C	4	Other consumer loans (Columns A through F)	RCONM739, RCONM740, RCONM741, RCONM742, RCONM743, RCONM744
RI-C	5	Unallocated, if any	RCONM745
RI-C	6	Total (for each column, sum of items 1.a through 5) (Columns A through F)	RCONM746, RCONM747, RCONM748, RCONM749, RCONM750, RCONM751
RC-B	M5.a	Credit card receivables (Columns A through D)	RCONB838, RCONB839, RCONB840, RCONB841
RC-B	M5.b	Home equity lines (Columns A through D)	RCONB842, RCONB843, RCONB844, RCONB845
RC-B	M5.c	Automobile loans (Columns A through D)	RCONB846, RCONB847, RCONB848, RCONB849
RC-B	M5.d	Other consumer loans (Columns A through D)	RCONB850, RCONB851, RCONB852, RCONB853
RC-B	M5.e	Commercial and industrial loans (Columns A through D)	RCONB854, RCONB855, RCONB856, RCONB857
RC-B	M5.f	Other (Columns A through D)	RCONB858, RCONB859, RCONB860, RCONB861
RC-C, Part I	2a.(1)	To U.S. branches and agencies of foreign banks	RCONB532
RC-C, Part I	2a.(2)	To other commercial banks in the U.S.	RCONB533

Schedule	**Item**	**Item Name**	**MDRM Number**
RC-C, Part I	2.b	To other depository institutions in the U.S.	RCONB534
RC-C, Part I	2.c.(1)	To foreign branches of other U.S. banks	RCONB536
RC-C, Part I	2.c.(2)	To other banks in foreign countries	RCONB537
RC-C, Part I	4.a	To U.S. addressees (domicile)	RCON1763
RC-C, Part I	4.b	To non-U.S. addressees (domicile)	RCON1764
RC-C, Part I	7	Loans to foreign governments and official institutions (including foreign central banks)	RCON2081
RC-C, Part I	9.b.(1)	Loans for purchasing or carrying securities (secured and unsecured)	RCON1545
RC-C, Part I	9.b.(2)	All other loans (exclude consumer loans)	RCONJ451
RC-C, Part I	10.a	Leases to individuals for household, family, and other personal expenditures (i.e., consumer leases)	RCONF162
RC-C, Part I	10.b	All other leases	RCONF163
RC-C, Part I	M1.e.(1)	To U.S. addressees (domicile)	RCONK163
RC-C, Part I	M1.e.(2)	To non-U.S. addressees (domicile)	RCONK164
RC-C, Part I	M5	Loans secured by real estate to non U.S. addressees (domicile)	RCONB837
RC-C, Part I	M6	Outstanding credit card fees and finance charges included in Schedule RC-C, part I, item 6.a	RCONC391
RC-C, Part I	M10.a.(1)	Construction, land development, and other land loans	RCONF578
RC-C, Part I	M10.a.(2)	Secured by farmland (including farm residential and other improvements)	RCONF579
RC-C, Part I	M10.a.(3)(a)	Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580
RC-C, Part I	M10.a.(3)(b)(1)	Secured by first liens	RCONF581
RC-C, Part I	M10.a.(3)(b)(2)	Secured by junior liens	RCONF582
RC-C, Part I	M10.a.(4)	Secured by multifamily (5 or more) residential properties	RCONF583
RC-C, Part I	M10.a.(5)	Secured by nonfarm nonresidential properties	RCONF584
RC-C, Part I	M10.b	Commercial and industrial loans	RCONF585
RC-C, Part I	M10.c.(1)	Credit cards	RCONF586
RC-C, Part I	M10.c.(2)	Other revolving credit plans	RCONF587
RC-C, Part I	M10.c.(3)	Automobile loans	RCONK196
RC-C, Part I	M10.c.(4)	Other consumer loans	RCONK208
RC-C, Part I	M10.d	Other loans	RCONF589
RC-C, Part I	M11.a.(1)	Construction, land development, and other land loans	RCONF590
RC-C, Part I	M11.a.(2)	Secured by farmland (including farm residential and other improvements)	RCONF591

Schedule	Item	Item Name	MDRM Number
RC-C, Part I	M11.a.(3)(a)	Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592
RC-C, Part I	M11.a.(3)(b)(1)	Secured by first liens	RCONF593
RC-C, Part I	M11.a.(3)(b)(2)	Secured by junior liens	RCONF594
RC-C, Part I	M11.a.(4)	Secured by multifamily (5 or more) residential properties	RCONF595
RC-C, Part I	M11.a.(5)	Secured by nonfarm nonresidential properties	RCONF596
RC-C, Part I	M11.b	Commercial and industrial loans	RCONF597
RC-C, Part I	M11.c.(1)	Credit cards	RCONF598
RC-C, Part I	M11.c.(2)	Other revolving credit plans	RCONF599
RC-C, Part I	M11.c.(3)	Automobile loans	RCONK195
RC-C, Part I	M11.c.(4)	Other consumer loans	RCONK209
RC-C, Part I	M11.d	Other loans	RCONF601
RC-C, Part I	M12.a	Loans secured by real estate (Columns A through C)	RCONG091, RCONG092, RCONG093
RC-C, Part I	M12.b	Commercial and industrial loans (Columns A through C)	RCONG094, RCONG095, RCONG096
RC-C, Part I	M12.c	Loans to individuals for household, family and other personal expenditures (Columns A through C)	RCONG097, RCONG098, RCONG099
RC-C, Part I	M12.d	All other loans and all leases (Columns A through C) Note: Memorandum items 12.a through 12.d of Schedule RC-C, Part I, will be combined into data items for "Total loans and leases" (Columns A through C).	RCONG100, RCONG101, RCONG102
RC-E	M6.a	Total deposits in those noninterest-bearing transaction account deposit products intended primarily for individuals for personal, household, or family use	RCONP753
RC-E	M6.b	Total deposits in those interest-bearing transaction account deposit products intended primarily for individuals for personal, household, or family use	RCONP754
RC-E	M6.c	Total deposits in all other transaction accounts of individuals, partnerships, and corporations	RCONP755
RC-E	M7.a.(1)	Total deposits in those MMDA deposit products intended primarily for individuals for personal, household, or family use	RCONP756
RC-E	M7.a.(2)	Deposits in all other MMDAs of individuals, partnerships, and corporations	RCONP757
RC-E	M7.b.(1)	Total deposits in those other savings deposit account deposit products intended primarily for individuals for personal, household, or family use	RCONP758

Schedule	**Item**	**Item Name**	**MDRM Number**
RC-E	M7.b.(2)	Deposits in all other savings deposit accounts of individuals, partnerships, and corporations	RCONP759
RC-L	1.a.(1)	Unused commitments for Home Equity Conversion Mortgage (HECM) reverse mortgages outstanding that are held for investment (included in item 1.a above)	RCONJ477
RC-L	1.a.(2)	Unused commitments for proprietary reverse mortgages outstanding that are held for investment (included in item 1.a above)	RCONJ478
RC-L	2.a	Amount of financial standby letters of credit conveyed to others	RCON3820
RC-L	3.a	Amount of performance standby letters of credit conveyed to others	RCON3822
RC-L	7.a.(1)	Credit default swaps (Columns A and B)	RCONC968, RCONC969
RC-L	7.a.(2)	Total return swaps (Columns A and B)	RCONC970, RCONC971
RC-L	7.a.(3)	Credit options (Columns A and B)	RCONC972, RCONC973
RC-L	7.a.(4)	Other credit derivatives (Columns A and B)	RCONC974, RCONC975
RC-L	7.b.(1)	Gross positive fair value (Columns A and B)	RCONC219, RCONC221
RC-L	7.b.(2)	Gross negative fair value (Columns A and B)	RCONC220, RCONC222
RC-L	7.c.(1)(a)	Sold protection	RCONG401
RC-L	7.c.(1)(b)	Purchased protection	RCONG402
RC-L	7.c.(2)(a)	Sold protection	RCONG403
RC-L	7.c.(2)(b)	Purchased protection that is recognized as a guarantee for regulatory capital purposes	RCONG404
RC-L	7.c.(2)(c)	Purchased protection that is not recognized as a guarantee for regulatory capital purposes	RCONG405
RC-L	7.d.(1)(a)	Investment grade (Columns A through C)	RCONG406, RCONG407, RCONG408
RC-L	7.d.(1)(b)	Sub-investment grade (Columns A through C)	RCONG409, RCONG410, RCONG411
RC-L	7.d.(2)(a)	Investment grade (Columns A through C)	RCONG412, RCONG413, RCONG414
RC-L	7.d.(2)(b)	Sub-investment grade (Columns A through C)	RCONG415, RCONG416, RCONG417
RC-L	8	Spot foreign exchange contracts	RCON8765
RC-L	9.b	Commitments to purchase when-issued securities	RCON3434
RC-L	10.a	Commitments to sell when-issued securities	RCON3435
RC-L	12.a	Futures contracts (Columns A through D)	RCON8693, RCON89694, RCON8695, RCON8696

Schedule	Item	Item Name	MDRM Number
RC-L	12.b	Forward contracts (Columns A through D)	RCON8697, RCON8698, RCON8699, RCON8700
RC-L	12.c.(1)	Written options (Columns A through D)	RCON8701, RCON8702, RCON8703, RCON8704
RC-L	12.c.(2)	Purchased options (Columns A through D)	RCON8705, RCON8706, RCON8707, RCON8708
RC-L	12.d.(1)	Written options (Columns A through D)	RCON8709, RCON8710, RCON8711, RCON8712
RC-L	12.d.(2)	Purchased options (Columns A through D)	RCON8713, RCON8714, RCON8715, RCON8716
RC-L	12.e	Swaps (Columns A through D)	RCON3450, RCON3826, RCON8719, RCON8720
RC-L	13	Total gross notional amount of derivative contracts held for trading (Columns A through D)	RCONA126, RCONA127, RCON8723, RCON8724
RC-L	14	Total gross notional amount of derivative contracts held for purposes other than trading (Columns A through D)	RCON8725, RCON8726, RCON8727, RCON8728
RC-L	14.a	Interest rate swaps where the bank has agreed to pay a fixed rate	RCONA589
RC-L	15.a.(1)	Gross positive fair value (Columns A through D)	RCON8733, RCON8734, RCON8735, RCON8736
RC-L	15.a.(2)	Gross negative fair value (Columns A through D)	RCON8737, RCON8738, RCON8739, RCON8740
RC-L	15.b.(1)	Gross positive fair value (Columns A through D)	RCON8741, RCON8742, RCON8743, RCON8744
RC-L	15.b.(2)	Gross negative fair value (Columns A through D)	RCON8745, RCON8746, RCON8747, RCON8748
RC-L	16.a	Net current credit exposure (Columns A through E)	RCONG418, RCONG419, RCONG420, RCONG421, RCONG422
RC-L	16.b.(1)	Cash - U.S. dollar (Columns A through E)	RCONG423, RCONG424, RCONG425, RCONG426, RCONG427
RC-L	16.b.(2)	Cash - Other currencies (Columns A through E)	RCONG428, RCONG429, RCONG430, RCONG431, RCONG432
RC-L	16.b.(3)	U.S. Treasury securities (Columns A through E)	RCONG433, RCONG434, RCONG435, RCONG436, RCONG437
RC-L	16.b.(4)	U.S. Government agency and U.S. Government-sponsored agency debt securities (Columns A through E)	RCONG438, RCONG439, RCONG440, RCONG441, RCONG442
RC-L	16.b.(5)	Corporate bonds (Columns A through E)	RCONG443, RCONG444, RCONG445, RCONG446, RCONG447

Schedule	**Item**	**Item Name**	**MDRM Number**
RC-L	16.b.(6)	Equity securities (Columns A through E)	RCONG448, RCONG449, RCONG450, RCONG451, RCONG452
RC-L	16.b.(7)	All other collateral (Columns A through E)	RCONG453, RCONG454, RCONG455, RCONG456, RCONG457
RC-L	16.b.(8)	Total fair value of collateral (sum of items 16.b.(1) through (7)) (Columns A through E)	RCONG458, RCONG459, RCONG460, RCONG461, RCONG462
RC-M	13.a.(1)(a)(1)	1-4 family residential construction loans	RCONK169
RC-M	13.a.(1)(a)(2)	Other construction loans and all land development and other land loans	RCONK170
RC-M	13.a.(1)(b)	Secured by farmland	RCONK171
RC-M	13.a.(1)(c)(1)	Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONK172
RC-M	13.a.(1)(c)(2)(a)	Secured by first liens	RCONK173
RC-M	13.a.(1)(c)(2)(b)	Secured by junior liens	RCONK174
RC-M	13.a.(1)(d)	Secured by multifamily (5 or more) residential properties	RCONK175
RC-M	13.a.(1)(e)(1)	Loans secured by owner-occupied nonfarm nonresidential properties	RCONK176
RC-M	13.a.(1)(e)(2)	Loans secured by other nonfarm nonresidential properties	RCONK177
RC-M	13.a.(3)	Commercial and industrial loans	RCONK179
RC-M	13.a.(4)(a)	Credit cards	RCONK180
RC-M	13.a.(4)(b)	Automobile loans	RCONK181
RC-M	13.a.(4)(c)	Other (includes revolving credit plans other than credit cards and other consumer loans)	RCONK182
RC-M	13.a.(5)	All other loans and all leases	RCONK183
RC-M	13.b.(1)	Construction, land development, and other land	RCONK187
RC-M	13.b.(2)	Farmland	RCONK188
RC-M	13.b.(3)	1-4 family residential properties	RCONK189
RC-M	13.b.(4)	Multifamily (5 or more) residential properties	RCONK190
RC-M	13.b.(5)	Nonfarm nonresidential properties	RCONK191
RC-M	13.b.(7)	Portion of covered other real estate owned included in items 13.b.(1) through (5) above that is protected by FDIC loss-sharing agreements	RCONK192
RC-M	13.c	Debt securities (included in Schedule RC, items 2.a and 2.b)	RCONJ461
RC-M	13.d	Other assets (exclude FDIC loss-sharing indemnification assets)	RCONJ462
RC-N	6	Loans to foreign governments and official institutions (Columns A through C)	RCON5389, RCON5390, RCON5391
RC-N	11a.(1)(a)	1-4 family residential construction loans	RCONK045, RCONK046,

Schedule	Item	Item Name	MDRM Number
		(Columns A through C)	RCONK047
RC-N	11.a.(1)(b)	Other construction loans and all land development and other land loans (Columns A through C)	RCONK048, RCONK049, RCONK050
RC-N	11.a.(2)	Secured by farmland (Columns A through C)	RCONK051, RCONK052, RCONK053
RC-N	11.a.(3)(a)	Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit (Columns A through C)	RCONK054, RCONK055, RCONK056
RC-N	11.a.(3)(b)(1)	Secured by first liens (Columns A through C)	RCONK057, RCONK058, RCONK059
RC-N	11.a.(3)(b)(2)	Secured by junior liens (Columns A through C)	RCONK060, RCONK061, RCONK062
RC-N	11.a.(4)	Secured by multifamily (5 or more) residential properties (Columns A through C)	RCONK063, RCONK064, RCONK065
RC-N	11.a.(5)(a)	Loans secured by owner-occupied nonfarm nonresidential properties (Columns A through C)	RCONK066, RCONK067, RCONK068
RC-N	11.a.(5)(b)	Loans secured by other nonfarm nonresidential properties (Columns A through C)	RCONK069, RCONK070, RCONK071
RC-N	11.c	Commercial and industrial loans (Columns A through C)	RCONK075, RCONK076, RCONK077
RC-N	11d1	Credit cards (Columns A through C)	RCONK078, RCONK079, RCONK080
RC-N	11d2	Automobile loans (Columns A through C)	RCONK081, RCONK082, RCONK083
RC-N	11d3	Other (includes revolving credit plans other than credit cards and other consumer loans) (Columns A through C)	RCONK084, RCONK085, RCONK086
RC-N	11e	All other loans and all leases (Columns A through C)	RCONK087, RCONK088, RCONK089
RC-N	11.f	Portion of covered loans and leases included in items 11.a through 11.e above that is protected by FDIC loss-sharing agreements (Columns A through C)	RCONK102, RCONK103, RCONK104
RC-N	M1.e.(1)	To U.S. addressees (domicile) (Columns A through C)	RCONK120, RCONK121, RCONK122
RC-N	M1.e.(2)	To non-U.S. addressees (domicile) (Columns A through C)	RCONK123, RCONK124, RCONK125
RC-N	M3.a	Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-N, item 1, above) (Columns A through C)	RCON1248, RCON1249, RCON1250
RC-N	M3.b	Loans to and acceptances of foreign banks (included in Schedule RC-N, item 2, above) (Columns A through C)	RCON5380, RCON5381, RCON5382
RC-N	M3.c	Commercial and industrial loans to non-U.S. addressees (domicile) (included in Schedule RC-N, item 4, above) (Columns A through C)	RCON1254, RCON1255, RCON1256

Schedule	**Item**	**Item Name**	**MDRM Number**
RC-N	M3.d	Leases to individuals for household, family, and other personal expenditures (included in Schedule RC-N, item 8, above) (Columns A through C)	RCONF166, RCONF167, RCONF168
RC-N	M5.b.(1)	Loans measured at fair value: Fair value (Columns A through C)	RCONF664, RCONF665, RCONF666
RC-N	M5.b.(2)	Loans measured at fair value: Unpaid principal balance (Columns A through C)	RCONF667, RCONF668, RCONF669
RC-N	M6	Derivative contracts: Fair value of amounts carried as assets (Columns A and B)	RCON3529, RCON3530
RC-O	M2	Estimated amount of uninsured deposits, including related interest accrued and unpaid	RCON5597
RC-O	M6.a	Special mention	RCONK663
RC-O	M6.b	Substandard	RCONK664
RC-O	M6.c	Doubtful	RCONK665
RC-O	M6.d	Loss	RCONK666
RC-O	M7.a	Nontraditional 1-4 family residential mortgage loans	RCONN025
RC-O	M7.b	Securitizations of nontraditional 1-4 family residential mortgage loans	RCONN026
RC-O	M8.a	Higher-risk consumer loans	RCONN027
RC-O	M8.b	Securitizations of higher-risk consumer loans	RCONN028
RC-O	M9.a	Higher-risk commercial and industrial loans and securities	RCONN029
RC-O	M9.b	Securitizations of higher-risk commercial and industrial loans and securities	RCONN030
RC-O	M10.a	Total unfunded commitments	RCONK676
RC-O	M10.b	Portion of unfunded commitments guaranteed or insured by the U.S. government (including the FDIC)	RCONK677
RC-O	M11	Amount of other real estate owned recoverable from the U.S. government under guarantee or insurance provisions (excluding FDIC loss-sharing agreements)	RCONK669
RC-O	M12	Nonbrokered time deposits of more than $250,000 (included in Schedule RC-E, Memorandum item 2.d)	RCONK678
RC-O	M13.a	Construction, land development, and other land loans secured by real estate	RCONN177
RC-O	M13.b	Loans secured by multifamily residential and nonfarm nonresidential properties	RCONN178
RC-O	M13.c	Closed-end loans secured by first liens on 1-4 family residential properties	RCONN179
RC-O	M13.d	Closed-end loans secured by junior liens on 1-4 family residential properties and revolving, open-end loans secured by 1-4 family residential properties and extended	RCONN180

Schedule	Item	Item Name	MDRM Number
		under lines of credit	
RC-O	M13.e	Commercial and industrial loans	RCONN181
RC-O	M13.f	Credit card loans to individuals for household, family, and other personal expenditures	RCONN182
RC-O	M13.g	All other loans to individuals for household, family, and other personal expenditures	RCONN183
RC-O	M13.h	Non-agency residential mortgage-backed securities	RCONM963
RC-O	M14	Amount of the institution's largest counterparty exposure	RCONK673
RC-O	M15	Total amount of the institution's 20 largest counterparty exposures	RCONK674
RC-O	M16	Portion of loans restructured in troubled debt restructurings that are in compliance with their modified terms and are guaranteed or insured by the U.S. government (including the FDIC) (included in Schedule RC-C, part I, Memorandum item 1)	RCONL189
RC-O	M17.a	Total deposit liabilities before exclusions (gross) as defined in Section 3(l) of the Federal Deposit Insurance Act and FDIC regulations	RCONL194
RC-O	M17.b	Total allowable exclusions, including interest accrued and unpaid on allowable exclusions	RCONL195
RC-O	M17.c	Unsecured "Other borrowings" with a remaining maturity of one year or less	RCONL196
RC-O	M17.d	Estimated amount of uninsured deposits, including related interest accrued and unpaid	RCONL197
RC-O	M18.a	"Nontraditional 1-4 family residential mortgage loans" as defined for assessment purposes only in FDIC regulations (Columns A through O)	RCONM964, RCONM965, RCONM966, RCONM967, RCONM968, RCONM969, RCONM970, RCONM971, RCONM972, RCONM973, RCONM974, RCONM975, RCONM976, RCONM977, RCONM978
RC-O	M18.b	Closed-end loans secured by first liens on 1-4 family residential properties (Columns A through O)	RCONM979, RCONM980, RCONM981, RCONM982, RCONM983, RCONM984, RCONM985, RCONM986, RCONM987, RCONM988, RCONM989, RCONM990, RCONM991, RCONM992, RCONM993

Schedule	**Item**	**Item Name**	**MDRM Number**
RC-O	M18.c	Closed-end loans secured by junior liens on 1-4 family residential properties (Columns A through O)	RCONM994, RCONM995, RCONM996, RCONM997, RCONM998, RCONM999, RCONN001, RCONN002, RCONN003, RCONN004, RCONN005, RCONN006, RCONN007, RCONN008, RCONN009
RC-O	M18.d	Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit (Columns A through O)	RCONN010, RCONN011, RCONN012, RCONN013, RCONN014, RCONN015, RCONN016, RCONN017, RCONN018, RCONN019, RCONN020, RCONN021, RCONN022, RCONN023, RCONN024
RC-O	M18.e	Credit cards (Columns A through O)	RCONN040, RCONN041, RCONN042, RCONN043, RCONN044, RCONN045, RCONN046, RCONN047, RCONN048, RCONN049, RCONN050, RCONN051, RCONN052, RCONN053, RCONN054
RC-O	M18.f	Automobile loans (Columns A through O)	RCONN055, RCONN056, RCONN057, RCONN058, RCONN059, RCONN060, RCONN061, RCONN062, RCONN063, RCONN064, RCONN065, RCONN066, RCONN067, RCONN068, RCONN069
RC-O	M18.g	Student loans (Columns A through O)	RCONN070, RCONN071, RCONN072, RCONN073, RCONN074, RCONN075, RCONN076, RCONN077, RCONN078, RCONN079, RCONN080, RCONN081, RCONN082, RCONN083, RCONN084
RC-O	M18.h	Other consumer loans and revolving credit plans other than credit cards (Columns A through O)	RCONN085, RCONN086, RCONN087, RCONN088, RCONN089, RCONN090, RCONN091, RCONN092, RCONN093, RCONN094, RCONN095, RCONN096, RCONN097, RCONN098, RCONN099
RC-O	M18.i	Consumer leases (Columns A through O)	RCONN100, RCONN101, RCONN102, RCONN103, RCONN104, RCONN105, RCONN106, RCONN107, RCONN108, RCONN109, RCONN110, RCONN111,

Schedule	Item	Item Name	MDRM Number
			RCONN112, RCONN113, RCONN114
RC-O	M18.j	Total (Columns A through N)	RCONN115, RCONN116, RCONN117, RCONN118, RCONN119, RCONN120, RCONN121, RCONN122, RCONN123, RCONN124, RCONN125, RCONN126, RCONN127, RCONN128

NOTE: The preceding list of "Data Items Removed" from the proposed FFIEC 051 excludes the following Call Report data items that are scheduled for removal effective September 30, 2016, and March 31, 2017, in accordance with the agencies' July 13, 2016, Federal Register notice (81 FR 45357), subject to OMB approval: Schedule RI, Memorandum items 14.a and 14.b; Schedule RC-C, Part I, Memorandum items 1.f.(2), 1.f.(5), and 1.f.(6); Schedule RC-M, Items 13.a.(5)(a) through (d); Schedule RC-N, Items 11.e.(1) through (4); and Schedule RC-N, Memorandum items 1.f.(2), 1.f.(5), and 1.f.(6).

Change in Frequency of Collection:

Semiannual Reporting (June and December)

Schedule	Item	Item Name	MDRM Number
RC-B	M6.a through M6.g	Structured financial products by underlying collateral or reference assets (Columns A through D)	RCONG348, RCONG349, RCONG350, RCONG351, RCONG352, RCONG353, RCONG354, RCONG355, RCONG356, RCONG357, RCONG358, RCONG359, RCONG360, RCONG361, RCONG362, RCONG363, RCONG364, RCONG365, RCONG366, RCONG367, RCONG368, RCONG369, RCONG370, RCONG371, RCONG372, RCONG373, RCONG374, RCONG375
RC-C, Part I	M4	Adjustable-rate closed-end loans secured by first liens on 1–4 family residential properties (included in Schedule RC-C, Part I, item 1.c.(2)(a), column B)	RCON5370
RC-F	6.a through 6.i	All other assets: itemized items greater than $100,000 that exceed 25 percent of this item	RCON2166, RCON1578, RCONC010, RCONC436, RCONJ448, RCON3549, RCON3550, RCON3551
RC-G	4.a through 4.g	All other liabilities: itemized items greater than $100,000 that exceed 25 percent of this item	RCON3066, RCONC011, RCON2932, RCONC012, RCON3552, RCON3553, RCON3554

Schedule	**Item**	**Item Name**	**MDRM Number**
RC-L	9.c through 9.f	All other off-balance sheet liabilities (exclude derivatives): itemized items over 25 percent of Schedule RC, item 27.a. "Total bank equity capital"	RCONC978, RCON3555, RCON3556, RCON3557
RC-L	10.b through 10.e	All other off-balance sheet assets (exclude derivatives): itemized items over 25 percent of Schedule RC, item 27.a. "Total bank equity capital"	RCONC5592, RCON5593, RCON5594, RCON5595
RC-N	M5.a	Loans and leases held for sale (Columns A through C)	RCONC240, RCONC241, RCONC226

Annual Reporting (December)

Schedule	**Item**	**Item Name**	**MDRM Number**
RI	M.12	Noncash income from negative amortization on closed-end loans secured by 1-4 family residential properties (included in Schedule RI, item 1.a.(1)(a))	RIADF228
RC-C, Part I	M8.b	Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1–4 family residential properties.	RCONF231
RC-C, Part I	M8.c	Total amount of negative amortization on closed-end loans secured by 1–4 family residential properties included in the amount reported in Memorandum item 8.a above	RCONF232
RC-M	6	Does the reporting bank sell private label or third-party mutual funds and annuities?	RCONB569
RC-M	7	Assets under the reporting bank's management in proprietary mutual funds and annuities	RCONB570
RC-M	9	Do any of the bank's Internet websites have transactional capability, i.e., allow the bank's customers to execute transactions on their accounts through the website?	RCON4088
RC-M	11	Does the bank act as trustee or custodian for Individual Retirement Accounts, Health Savings Accounts, and other similar accounts?	RCONG463
RC-M	12	Does the bank provide custody, safekeeping, or other services involving the acceptance of order for the sale or purchase of securities?	RCONG464
RC-M	14.a	Total assets of captive insurance subsidiaries	RCONK193
RC-M	14.b	Total assets of captive reinsurance subsidiaries	RCONK194

Data Items Removed

Schedule	Item	Item Name	MDRM Number
RI-B, Part I	2.a	Loans to and acceptances of U.S. banks and other U.S. depository institutions (Column A and Column B)	RIAD4653, RIAD4663
RI-B, Part I	2.b	Loans to and acceptances of foreign banks (Column A and Column B)	RIAD4654, RIAD4664
RC-C, Part II	1	Yes/No indicator whether all or substantially all of the dollar volume of 'loans secured by nonfarm nonresidential properties' and 'commercial and industrial loans to U.S. addressees' have original amounts of $100,000 or less	RCON6999
RC-C, Part II	2.a	Total number of loans secured by nonfarm nonresidential properties currently outstanding	RCON5562
RC-C, Part II	2.b	Total number of commercial and industrial loans to U.S. addressees currently outstanding	RCON5563
RC-C, Part II	5	Yes/No indicator whether all or substantially all of the dollar volume of 'Loans secured by farmland' and 'Loans to finance agricultural production and other loans to farmers' have original amounts of $100,000 or less	RCON6860
RC-C, Part II	6.a	Total number of loans secured by farmland currently outstanding	RCON5576
RC-C, Part II	6.b	Total number of loans to finance agricultural production and other loans to farmers currently outstanding	RCON5577
RC-E, Part I	M6.c	Total deposits in all other transaction accounts of individuals, partnerships, and corporations	RCONP755
RC-M	13.a.(2)	Loans to finance agricultural production and other loans to farmers covered by loss-sharing agreements with the FDIC	RCFDK178
RC-M	13.a.(3)	Commercial and industrial loans covered by loss-sharing agreements with the FDIC	RCFDK179
RC-M	13.a.(4)(a)	Credit card loans covered by loss-sharing agreements with the FDIC	RCFDK180
RC-M	13.a.(4)(b)	Automobile loans covered by loss-sharing agreements with the FDIC	RCFDK181
RC-M	13.a.(4)(c)	All other consumer loans covered by loss-sharing agreements with the FDIC	RCFDK182
RC-N	11.b	Loans to finance agricultural production and other loans to farmers covered by loss-sharing agreements with the FDIC (Column A through Column C)	RCFDK072, RCFDK073, RCFDK074
RC-N	11.c	Commercial and industrial loans covered by loss-sharing agreements with the FDIC (Column A through Column C)	RCFDK075, RCFDK076, RCFDK077
RC-N	11.d.(1)	Credit card loans covered by loss-sharing agreements with the FDIC (Column A through Column C)	RCFDK078, RCFDK079, RCFDK080
RC-N	11.d.(2)	Automobile loans covered by loss-sharing agreements with the FDIC (Column A through Column C)	RCFDK081, RCFDK082, RCFDK083
RC-N	11.d.(3)	All other consumer loans covered by loss-sharing agreements with the FDIC (Column A through Column C)	RCFDK084, RCFDK085, RCFDK086

Change in Reporting Threshold

To be completed by banks with $10 billion or more in total assets

Schedule	Item	Item Name	MDRM Number
RI	M9.a	Net gains (losses) on credit derivatives held for trading	RIADC889
RI	M9.b	Net gains (losses) on credit derivatives held for purposes other than trading	RIADC890
RC-E, Part II	1	Deposits of Individuals, partnerships, and corporations (include all certified and official checks)	RCFNB553
RC-E, Part II	2	Deposits of U.S. banks and other U.S. depository institutions in foreign offices	RCFNB554
RC-E, Part II	3	Deposits of foreign banks in foreign offices	RCFN2625
RC-E, Part II	4	Deposits of foreign governments and official institutions in foreign offices	RCFN2650
RC-E, Part II	5	Deposits of U.S. Government and states and political subdivisions in the U.S in foreign offices	RCFNB555
RC-E, Part II	6	Total deposits in foreign offices	RCFN2200

NOTE: The preceding list of "Data Items Removed" from the FFIEC 031 excludes the following Call Report data items that are scheduled for removal effective September 30, 2016, and March 31, 2017, in accordance with the agencies' July 13, 2016, Federal Register notice (81 FR 45357), subject to OMB approval: Schedule RI, Memorandum items 14.a and 14.b; Schedule RC-C, Part I, Memorandum items 1.f.(2), 1.f.(5), 1.f.(6), and 1.f.(7); Schedule RC-M, Items 13.a.(5)(a) through (e); Schedule RC-N, Items 11.e.(1) through (5); and Schedule RC-N, Memorandum items 1.f.(2), 1.f.(5), 1.f.(6), and 1.f.(7).

Change in Reporting Threshold

To be completed by banks with $10 million or more in average trading assets

Schedule	Item	Item Name	MDRM Number
RI	M8.a	Trading revenue from interest rate exposures	RIAD8757
RI	M8.b	Trading revenue from foreign exchange exposures	RIAD8758
RI	M8.c	Trading revenue from equity security and index exposures	RIAD8759
RI	M8.d	Trading revenue from commodity and other exposures	RIAD8760
RI	M8.e	Trading revenue from credit exposures	RIADF186

Data Items Removed

Schedule	Item	Item Name	MDRM Number
RI	1.a.(4)	Interest on loans to foreign governments and official institutions	RIAD4056
RI	1.e	Interest income from trading assets	RIAD4069
RI-B, Part I	2	Loans to depository institutions and acceptances of other banks (Column A through Column B)	RIAD4481, RIAD4482
RI-B, Part I	6	Loans to foreign governments and official institutions (Column A through Column B)	RIAD4643, RIAD4627
RC-C, Part I	2.a.(1)	Loans to U.S. branches and agencies of foreign banks	RCONB532

Schedule	Item	Item Name	MDRM Number
RC-C, Part I	2.a.(2)	Loans to other commercial banks in the U.S. Note: Items 2.a.(1) and 2.a.(2) of Schedule RC-C, Part I, will be combined into one data item for total loans to commercial banks in the U.S.	RCONB533
RC-C, Part I	2.c.(1)	Loans to foreign branches of other U.S. banks	RCONB536
RC-C, Part I	2.c.(2)	Loans to other banks in foreign countries Note: Items 2.c.(1) and 2.c.(2) of Schedule RC-C, Part I, will be combined into one data item for total loans to banks in foreign countries.	RCONB537
RC-C, Part I	7	Loans to foreign governments and official institutions (including foreign central banks)	RCON2081
RC-E	M6.c	Total deposits in all other transaction accounts of individuals, partnerships, and corporations	RCONP755
RC-M	13.a.(3)	Commercial and industrial loans covered by loss-sharing agreements with the FDIC	RCONK179
RC-M	13.a.(4)(a)	Credit card loans covered by loss-sharing agreements with the FDIC	RCONK180
RC-M	13.a.(4)(b)	Automobile loans covered by loss-sharing agreements with the FDIC	RCONK181
RC-M	13.a.(4)(c)	All other consumer loans covered by loss-sharing agreements with the FDIC	RCONK182
RC-N	6	Loans to foreign governments and official institutions (Column A through Column C)	RCON5389, RCON5390, RCON5391
RC-N	11.c	Commercial and industrial loans covered by loss-sharing agreements with the FDIC (Column A through Column C)	RCONK075, RCONK076, RCONK077
RC-N	11.d.(1)	Credit card loans covered by loss-sharing agreements with the FDIC (Column A through Column C)	RCONK078, RCONK079, RCONK080
RC-N	11.d.(2)	Automobile loans covered by loss-sharing agreements with the FDIC (Column A through Column C)	RCONK081, RCONK082, RCONK083
RC-N	11.d.(3)	All other consumer loans covered by loss-sharing agreements with the FDIC (Column A through Column C)	RCONK084, RCONK085, RCONK086
RC-N	M6	Derivative contracts: fair value of amounts carried as assets (Column A through Column B)	RCON3529, RCON3530

NOTE: The preceding list of "Data Items Removed" from the FFIEC 041 excludes the following Call Report data items that are scheduled for removal effective September 30, 2016, and March 31, 2017, in accordance with the agencies' July 13, 2016, Federal Register notice (81 FR 45357), subject to OMB approval: Schedule RI, Memorandum items 14.a and 14.b; Schedule RC-C, Part I, Memorandum items 1.f.(2), 1.f.(5), and 1.f.(6); Schedule RC-M, Items 13.a.(5)(a) through (d); Schedule RC-N, Items 11.e.(1) through (4); and Schedule RC-N, Memorandum items 1.f.(2), 1.f.(5), and 1.f.(6).

Change in Reporting Threshold

To be completed by banks with $10 billion or more in total assets

Schedule	Item	Item Name	MDRM Number
RI	M9.a	Net gains (losses) on credit derivatives held for trading	RIADC889
RI	M9.b	Net gains (losses) on credit derivatives held for purposes other than trading	RIADC890

Change in Reporting Threshold

To be completed by banks with $10 million or more in average trading assets

Schedule	Item	Item Name	MDRM Number
RI	M8.a	Trading revenue from interest rate exposures	RIAD8757
RI	M8.b	Trading revenue from foreign exchange exposures	RIAD8758
RI	M8.c	Trading revenue from equity security and index exposures	RIAD8759
RI	M8.d	Trading revenue from commodity and other exposures	RIAD8760
RI	M8.e	Trading revenue from credit exposures	RIADF186

Dated: August 5, 2016.

Stuart Feldstein,

Director, Legislative and Regulatory Activities, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, August 8, 2016.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 5th day of August 2016.

Federal Deposit Insurance Corporation.

Ralph E. Frable,

Assistant Executive Secretary.

[FR Doc. 2016–19268 Filed 8–12–16; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–C

DEPARTMENT OF VETERANS AFFAIRS

Veterans Employment Pay for Success Grant Program ("VEPFS program")

AGENCY: VA Center for Innovation, Vocational Rehabilitation and Employment, Department of Veterans Affairs (VA).

ACTION: Notice of funding availability.

SUMMARY: The Department of Veterans Affairs (VA) is establishing a grant program (Veterans Employment Pay for Success (VEPFS)) under the authority of 38 U.S.C. 3119 to award grants to eligible entities to fund projects that are successful in accomplishing employment rehabilitation for Veterans with a Service-connected Disability. VA will award grants on the basis of an eligible entity's proposed use of a Pay for Success (PFS) strategy to achieve goals. This *Notice* includes the general process for awarding the grant, criteria and parameters for evaluating grant applications, priorities related to the award of a grant, and general requirements and guidance for administering a VEPFS grant program.

DATES: Applications for a grant under the VEPFS program must be submitted to *Grants.gov* by 11:59 p.m. Eastern Time September 14, 2016. Successful applicants will be notified by September 30, 2016. The award made through the VEPFS program will cover a period of 60 months.

FOR FURTHER INFORMATION CONTACT: Patrick Littlefield, Executive Director, VA Center for Innovation. *Patrick.Littlefield@va.gov,* (202) 256–7176.

If mailing correspondence, other than application material, please send to: VA Center for Innovation, VA Central Office, Attn: Patrick Littlefield (320), 810 Vermont Avenue NW., Washington, DC 20420.

Disclosure: Publication of this *Notice* does not obligate VA to award any grant or to obligate the entire amount of funding available.

SUPPLEMENTARY INFORMATION:

I. Program Description

A. Background

This competition of the VEPFS program is a collaborative effort by the Department of Veterans Affairs (VA) and the Corporation for National and Community Service (CNCS) to test the Pay for Success (PFS) model as a way to improve suitable Employment Outcomes for Veterans with a Service-connected Disability of Post-Traumatic Stress Disorder (PTSD). Improving suitable Employment Outcomes, as noted in Appendix I, means creating positive impact in terms of these outcomes, where the results for individuals that receive the Intervention are better than the results for a valid comparison group that did not receive the Intervention.

Throughout this document, the nomenclature of outcomes, consistent with the Pay for Success field's use of the term, is inextricably linked to impact in this *Notice*. This competition seeks to create a meaningful difference in Veterans' lives that would not otherwise exist.

This goal is consistent with the mission of VA, which is to fulfill President Lincoln's promise, "To care for him who shall have borne the battle, and for his widow, and his orphan" by serving and honoring the men and women who are America's Veterans. VA's Office of Economic Opportunity within the Veterans Benefits Administration has a further defined mission to "Help Veterans attain personal and economic success" through a variety of benefits, services, and activities including promoting employment opportunities for Veterans. The targeted veterans for this Pay for Success (PFS) pilot will need to have Service-connected Disability of PTSD.

While VA and other government organizations, such as the Department of Labor, have programs that assist Veterans in seeking employment, there is not an employment program that focuses specifically and solely on Veterans with PTSD. VA is interested in enhancing vocational services with the intent of improving overall Employment Outcomes for this target group of Veterans. This PFS competition will target the effective delivery of employment Interventions to Veterans with a Service-connected Disability of PTSD. Employment Outcomes will be related to success in obtaining and sustaining suitable employment. The overarching goal of this competition is to generate positive impact for Veterans as they seek to return to competitive employment. Please see Appendix II for more information on the background of the focus of this competition.

Background on the Social Innovation Fund as Partner to VA

The Social Innovation Fund (SIF) at the Corporation for National and Community Service (CNCS) has chosen to partner with VA on this program. The mission of CNCS is to improve lives, strengthen communities, and foster civic engagement through service and volunteering. Through AmeriCorps, Senior Corps, and the Volunteer Generation Fund, CNCS has helped to engage millions of citizens in meeting community and national challenges through service and volunteer action. Through the SIF, CNCS has augmented its traditional activities with an enhanced focus on identifying and growing innovative, evidence-based approaches to our nation's challenges.

The purpose of the SIF is to grow the impact of innovative community-based solutions that have compelling evidence of improving the lives of people in low-income communities throughout the United States. The SIF directs resources toward increasing the evidence-base, capacity, and scale of the organizations it funds in order to improve the lives of people served by those organizations. The SIF also generates broader impact by leveraging the grant program in various ways to improve how philanthropies, Federal government departments and agencies, state and local government, and community-based organizations deploy funds to address social challenges. Additionally, it enhances the ability of the nonprofit sector to support the growth of innovative, high-impact organizations.

Ultimately, SIF PFS efforts are intended to:

- Increase knowledge in the social sector about which capacity building and PFS Project-structuring practices increase the likelihood of successful implementation of PFS projects as well as other evidence-based approaches and related social financing mechanisms.
- Accelerate the development of the field to make it easier to adopt outcomes-focused funding models.
- Attract capital to finance effective solutions to challenges facing low-income communities nationwide and to high-performing organizations that demonstrate the ability to strengthen, grow, and sustain effective solutions for challenges facing low-income communities.

CNCS's partnership on this program provides expertise on PFS to pair with VA's expertise on Veterans' issues.

B. Funding Purpose

The VEPFS program will fund a demonstration project (''demonstration'') to support and assess the use of Pay for Success (PFS) to improve Employment Outcomes for Veterans with a Service-connected Disability of PTSD. The program will specifically target Veterans with a Service-connected Disability of PTSD in low-income communities or in geographical areas that have the highest demonstrated employment need. Improved Employment Outcomes will be based on whether:

- Employment is consistent with a Veteran's interests, aptitudes, skills, and abilities;
- Employment improves (or does not aggravate/worsen) the Veteran's disabling conditions;
- Employment requires reasonably developed skills;
- Employment provides the Veteran with a Living Wage (preferred) or improves the Veteran's earnings annually; and
- Competitive employment is sustained.

PFS is a strategy of procuring positive outcomes that manifest in positive impact by paying for an Intervention only once it produces those outcomes. PFS projects typically involve two elements: a PFS Agreement and PFS financing.

1. A PFS Agreement provides for payment when an Intervention achieves positive outcomes at pre-set target levels, as compared to the outcomes achieved by a counterfactual group. (Pre-set means set in, and by the signatories to, the PFS Agreement before the Intervention is deployed.) Achievement of outcomes is typically verified by an Evaluator using a robust methodology agreed upon by all parties to a transaction to ascertain impact.

2. PFS financing, sometimes referred to as social impact bonds, is the provision of mission-driven capital that covers the upfront costs of delivering the Intervention and potentially other project costs. Given that verifying the outcomes that trigger Outcomes Payments may take several years, Service Providers often will not have the resources to self-finance the costs of implementing a preventive Intervention during an agreement period. PFS financing covers these costs. Such third-party investment is typically at-risk and return of capital (and any potential return on investment) via the Outcomes Payor is dependent, in whole or in part, on the achievement of outcomes identified in the PFS Agreement.

Projects involving either solely a PFS Agreement, or both a PFS Agreement and PFS Financing, are considered viable projects to ultimately receive Outcomes Payments funded by the VEPFS program. Please see the diagram in Appendix II for the typical, though not mandatory, steps in a PFS project that includes PFS financing.

Note that the PFS Agreement must be in accordance with standards relating to evaluation methodology, metrics for Employment Outcomes, and investor rate of return to be issued by VA in the terms and conditions of the grant agreement.

For definitions related to the VEPFS program, please see Appendix I.

The VEPFS program will fund Outcomes Payments, which by definition in Appendix I are tied to impact, for a High-Quality PFS Project designed to improve Employment Outcomes among Veterans with a Service-connected Disability of PTSD. Through this competition, VA will select an entity to act as an Outcomes Payor, administering the Federal funds and matching non-Federal funds to pay for improved Employment Outcomes.

The key objectives of this demonstration are as follows:

1. Pilot test the PFS model operated by a project coordinator to learn whether the PFS approach is feasible to fund a Veterans' employment initiative.

2. Assist Veterans with a Service-connected Disability of PTSD in securing employment and/or increasing earnings.

3. Add evidence to the knowledge base about effective and integrated Interventions to support Veterans' employment.

4. Conduct research to identify lessons learned and best practices on the feasibility of testing effective Veterans' employment Interventions.

C. Approach

1. Applicants must present either a Partial Project Partnership or Full Project Partnership for a High-Quality PFS Project at the time of application.

2. The Grant Recipient (referred to as "Recipient" in the remainder of the document) will serve as an Outcomes Payor and thus a party to a PFS Agreement that is designed to improve Employment Outcomes among Veterans with a Service-connected Disability of PTSD.

3. The Recipient is responsible for securing non-Federal funds in accordance with the 1:1 cash match requirement for the entire grant award.

4. Within six months of the grant award, the Recipient must submit to VA a proposed high-level project plan that outlines key milestones and associated target deadlines for the duration of the project period.

5. The Project Partnership must produce a High-Quality PFS Project for improving Employment Outcomes among Veterans with a Service-connected Disability of PTSD.

6. The Recipient will capture and share with the public key learnings from the PFS activity that this grant supports. The Recipient will work with VA and CNCS in order to disseminate information related to the Recipient's PFS activity supported by this grant. This requirement involves, but is not limited to, the Recipient providing to VA and making publicly available all major documents and tools developed for the High-Quality PFS Project, including a PFS Agreement, taking into consideration the confidentiality needs of Participants as well as local, state, and Federal laws.

7. VA will ensure a Grant Program Assessment is conducted. The Grant Program Assessment will ascertain the level of progress made towards achieving the objectives articulated in Section I.B. of this *Notice* throughout, and at the conclusion of, the period of performance.

8. If the Evaluator certifies that the impact of the Intervention, as determined through rigorous evaluation, has met the requirements of the PFS Agreement, Outcomes Payments will be disbursed by the Recipient to the Service Provider.

D. Key Programmatic Requirements

Any Project Coordinator and Investor(s) must be procured in accordance with the requirements in 2 CFR 200.317–200.326. Alternatively, nonprofit community organizations may continue to comply with the Procurement Standards in OMB Circular A–110 for two additional fiscal years, beginning after December 26, 2014, meaning through Fiscal Year 2017. Such election must be specified in the nonprofit organization's documented policies and procedures. In the case that applicants have not yet procured a Project Coordinator and Investor(s) but plan to, applicants must present a detailed plan for forming a Full Project Partnership at the time of application that follows grant procurement requirements in 2 CFR 200.317–200.326 for any Federal funds utilized.

The Recipient must submit to VA a proposed high-level project plan that outlines key milestones and associated target deadlines for the duration of the project period, reflecting the following activities and the duration for each:

- Formation of a Full Project Partnership and development and execution of the PFS Agreement;
- Delivery of the Intervention;
- Employment Outcomes evaluation to ascertain impact; and
- Outcomes Payor review of the evaluation and potential release of Outcomes Payments. (Note that Employment Outcomes may be evaluated and Outcomes Payments released at other times for positive impact during this project period if the terms of the PFS Agreement call for multiple payment points.)

The Grant Program Assessment activities include, but are not limited to:

- Providing interviews, data and documentation of inputs, outputs, and Employment Outcomes to support the Grant Program Assessment;
- Requiring participation from the Recipient in the Grant Program Assessment; and
- Conducting additional activities to augment the overall knowledge sharing agenda.

E. Program Authority

Funding applied for under this *Notice* is provided by VA and CNCS.

VA: Funding from VA is authorized by 38 U.S.C. 3119. Section 3119 authorizes VA to make grants to public or nonprofit agencies for the development of projects "designed to increase the resources and potential for accomplishing the rehabilitation of disabled veterans[,]" which include Veterans with Service-connected Disablilities.

CNCS: Section 198K of the National and Community Service Act of 1990, Public Law 101–610, as amended, (42 U.S.C. 12653k) established CNCS's Social Innovation Fund. The Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, Division G, Title IV, Corporation for National and Community Service, and The Consolidated and Further Continuing Appropriations Act, 2016, Public Law 114–92, Division H, Title IV, Corporation for National and Community Service, provided that up to 20% of funds made available for the Social Innovation Fund may be provided to PFS.

VA and CNCS entered into an interagency agreement, which designates VA as the agency responsible for implementing this PFS project.

II. Federal Award Information

A. Estimated Available Funds and Award Amount

Up to $3.0 million in Federal funding is available for the award. VA intends to award one grant of $3.0 million through this competition.

B. Project Period

The anticipated start date of grant funding under this announcement is September 30, 2016. The grant award covers a five-year project period. Applications should represent the full five-year period.

C. Funding Instrument

The funding mechanism for the VEPFS program is a grant.

III. Eligibility Information

A. Eligible Applicants

This competition is limited to public or nonprofit agencies, including nonprofit institutions of higher learning. Eligible nonprofit organizations are defined in 2 CFR 200.70. Eligible applicants must propose to serve Veterans with a Service-Connected Disability of PTSD in low-income communities or in geographical areas that have the highest need in the issue areas. "Highest need " means greater than the national average, and "issue areas" means (1) reductions in poverty or increases in economic opportunity for economically disadvantaged individuals or (2) health, including health services and health eductation.

B. Cost Sharing or Matching

The Recipient must provide non-Federal cash funds for Outcomes Payments that match by 100% the Federal funds received through this award. An applicant may meet the match requirement with a combination of its own funds and those of other non-Federal sources. At the time of application, applicants must present evidence that they have already secured 10% of their match requirement in non-Federal cash by submitting match verification documents, as explained in Section IV.D. (*Other Submission Requirements*) of this *Notice.*

C. Other

Entities that have been convicted of a Federal crime may not receive assistance described in this *Notice.*

Pursuant to the Lobbying Disclosure Act of 1995, an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), that engages in lobbying activities is not eligible to apply.

IV. Application and Submission Information

A. Address To Request Application Package

Applicants may download the application package from *Grants.gov.* Questions regarding the application process should be referred to the Program Official: Patrick Littlefield (Executive Director, VA Center for Innovation), *Patrick.Littlefield@va.gov,* (202) 256–7176 (This is not a toll-free number).

Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 1–800–829–4833 (this is a toll-free number).

B. Content and Form of Application

1. Application Content

The VEPFS Grant Program application package provided at *Grants.gov* (Funding Opportunity Number: VA–VACI–2016–01) contains electronic versions of the application forms that are required. Additional attachments to satisfy the required application information may be provided. The application must provide a well-designed plan with a clear and compelling justification for receiving the requested funds. Reviewers will assess the application on the basis of the program goals, partnership, work plan and budget, expertise and capacity, and match as noted in Section IV. of this *Notice.* All VEPFS grant applications must consist of the following:

Completed applications must have the following components:

- Standard Forms (SF) 424, 424A and 424B: The SF–424, SF–424A, and SF–424B require general information about the applicant and proposed project.
- Narrative
  - ○ *Executive Summary:* An outline of key information and a brief description of the applicant's proposal. The Executive Summaries of all compliant applications will be published on the VA Web site. The outline of key information should include, in outline format, the following:
  - ○ Name of Proposal
  - ○ Name of Intervention
  - ○ Type of Partnership Presented at Time of Application [Full/Partial Project Partnership]
  - ○ Amount of Federal Funds Sought (up to $3.0 million)
  - ○ Match
    - ▪ Amount of Funding Secured as Cash on Hand (at least 10% of the Non-Federal Match Requirement)
    - ▪ Amount of Funding for which Applicant Has Received Commitments
    - ▪ Amount of Funding for which Applicant Has Received Letters of Interest
    - ▪ Amount of Funding for which Applicant Has Plan to Secure
  - ○ Project Description
  - ○ Project Partnership
  - ○ Work Plan and Budget
  - ○ Expertise and Capacity
  - ○ Match
  - ○ Match Verification Documentation

See Section V.A. of this *Notice* for details on information that should be included in the Project Description, Project Partnership, Work Plan and Budget, Expertise and Capacity, Match, and Match Verification Documentation components.

Applications may not exceed 50 double-spaced pages as the pages print out from *Grants.gov.* The Budget section is not included in the page limit. Please note that reviewers will be instructed to stop reading the Narrative section of the grant application after page 50. Reviewers will not consider material past the page limit.

Applications must include a Dun and Bradstreet Universal Numbering System (DUNS) number *and* an Employer Identification Number. The DUNS number does not replace an Employer Identification Number. You can obtain a DUNS number at no cost by calling the DUNS number request line at (866) 705–5711 or by applying online at *http://fedgov.dnb.com/webform.* The Web site indicates a 48-hour email turnaround time on requests for DUNS numbers; however, VA recommends registering at least 30 days before the application due date.

After obtaining a DUNS number, applicants must also register with the System for Award Management (SAM) and maintain an active SAM registration until the application process is complete and, if a grant is awarded, throughout the life of the award. SAM registration must be renewed annually. VA suggests finalizing a new registration or renewing an existing one at least two weeks before the application deadline to allow time to resolve any issues that may arise. Applicants must use their SAM-registered legal name and address on all grant applications to VA.

VA will not make an award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if the applicant has not fully complied with the requirements by the time VA is ready to make an award, VA will determine the applicant is not qualified to receive a Federal award and will use this determination as a basis for making the award to another applicant. See the SAM Quick Guide for Grantees at *https://www.sam.gov/sam/transcript/SAM_Quick_Guide_Grants_Registrations-v1.6.pdf.*

2. Submission Dates and Times

Applications are due September 14, 2016 by 11:59 p.m. Eastern Time. Submissions received after this application deadline will be considered late and will not be reviewed or considered. Submissions via email, mail, or fax will not be accepted. VA reserves the right to extend the submission deadline and any notice of such extended deadline will be posted on the VA Web site.

It is the responsibility of grant applicants to ensure a full and complete application is submitted via *Grants.gov.* Applicants are encouraged to periodically review the "Version History Tab" of the funding opportunity announcement in *Grants.gov* to identify if any modifications have been made to the funding announcement and/or opportunity package. Upon initial download of the funding opportunity package, applicants will be asked to provide an email address to be notified of any changes to the opportunity package before the closing date. Providing your email address will allow *Grants.gov* to send you an email message in the event this funding opportunity package is changed and/or republished on *Grants.gov* prior to the posted closing date. Any technical issues during any document download or submission processes should be directed to *Grants.gov* for assistance.

Once the application is submitted in *Grants.gov,* the applicant will see a confirmation screen explaining that your submission is being processed and a link will be provided to track the application. Retain the *Grants.gov* application tracking number received in the application submission confirmation screen. This tracking number is also emailed to the applicant upon submission.

VA may consider an application after the deadline, but only if the applicant submits an email explaining the extenuating technical circumstance that caused the delay. VA will determine the admissibility of late applications on a case-by-case basis. However, please be advised that VA will not consider an advance request to submit a late application. Applicants must send the email to *Patrick Littlefield* within the 24 hours immediately after the deadline. Communication with VA staff, including a program officer, is not a substitute for sending a letter to *Patrick.Littlefield@va.gov.* VA will determine whether or not to accept a late application on a case-by-case basis.

C. Intergovernmental Review

The applications will be reviewed solely by subject matter experts and authorized personnel from VA and other Federal agencies. The program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

D. Funding Restrictions

The Recipient's request for funding must be consistent with the limitations and uses of grant funds set forth in this *Notice.* Pursuant to 2 CFR 200.414, for indirect costs, the Recipient may utilize a 10% de minimis rate of modified total direct costs, utilize a rate already negotiated with the Federal Government, negotiate an indirect cost rate for the first time, or charge costs directly following 2 CFR 200.413. The indirect rate utilized must be applied consistently across all Federal awards.

The Recipient may draw down funds for Outcomes Payments only after the Employment Outcomes have been achieved and verified according to pre-set requirements.

In the event that Employment Outcomes are achieved at or above pre-set target levels per the terms of the PFS Agreement and all funds for Outcomes Payments are claimed: The Recipient will release Outcomes Payments, funded by this grant and by non-Federal sources through the match requirement, per the terms of the PFS Agreement related to a High-Quality PFS Project for improving Employment Outcomes among Veterans with a Service-connected Disability of PTSD.

In the event Employment Outcomes are not achieved at or above pre-set target levels per the terms of the PFS Agreement and not all funds for Outcomes Payments are claimed: The Recipient shall not draw down VA or CNCS funds for Outcomes Payments as opposed to funds for indirect costs. Instead, CNCS funds for Outcomes Payments will return to CNCS and VA funds for Outcomes Payments will return to the U.S. Treasury via VA.

E. Other Submission Requirements

1. Electronic Submission via *Grants.gov*

Applications for the VEPFS program must be submitted electronically through *Grants.Gov.*

2. Submission of Additional Documents

Match Verification Documentation: At the time of application, applicants must demonstrate through a letter or other form of documentation that they have cash-on-hand that meets 10% of their match requirement. Applicants may demonstrate cash-on-hand by a statement from the Chief Financial Officer or other officer that the organization has established a reserve of otherwise uncommitted funds for the purposes of fulfilling this match requirement. A bank statement or report of assets is not sufficient without the accompanying statement that the funds are uncommitted. Applicants may also demonstrate commitments by a dated and signed letter from each donor/foundation, indicating the amount of funds committed for the specific use of supporting this grant. Such a letter must contain a firm commitment to provide the applicant the stated funding upon award of a grant by VA.

To demonstrate cash on hand, applicants may demonstrate cash-on-hand by a statement from the Chief Financial Officer or other officer that the organization has established a reserve of otherwise uncommitted funds for the purposes of fulfilling this match requirement. A bank statement or report of assets is not sufficient without the accompanying statement that the funds are uncommitted. Applicants may also demonstrate commitments by a dated and signed letter from each donor/foundation, indicating the amount of funds committed for the specific use of supporting this grant. Such a letter must contain a firm commitment to provide the applicant the stated funding upon award of a grant by VA.

Documentation must be uploaded as part of the grant application package to *Grants.gov.* Applicants should include the following information:

- The legal applicant name and applicant's point of contact information;
- The application ID number;
- A list of documents attached to the email;
- Individually saved files that are clearly labeled; and
- Files that include the legal applicant name and application ID number within the body of the document.

Applications must be submitted as a complete package, including the additional documents. Materials arriving separately will not be considered and may result in the application being rejected. Match verification, as well as all other documentation must be received by the application deadline. Submission of evidence of match by the application deadline is a compliance criterion.

Do not submit supplementary material such as videos, brochures, letters of support, or any items not requested in this Notice. VA will not review or return them.

V. Application Review Information

A. Selection Criteria

Reviewers will assess the degree to which the applicant clearly and convincingly meets the following criteria and score them according to the points assigned to each criteria (out of 100 total points possible):

1. Project Description (up to 30 points)

- Identifies and describes an employment Intervention for Veterans with a Service-connected Disability of PTSD (3 points);
- Identifies and describes the methodology for delivering an employment Intervention to Veterans with a Service-Connected Disability of PTSD through a PFS Agreement that is supported by Strong Evidence, describing the Strong Evidence of the Intervention and describing the Employment Outcomes to be evaluated. Please include information on the measurable Employment Outcomes the applicant seeks to improve by replicating or expanding a proven initiative or supporting a new evidence-based initiative (5 points);
- Identifies where geographically the Intervention to be delivered through the PFS Agreement will be deployed and explains in detail how that Intervention will serve Veterans with a Service-connected Disability of PTSD in (1) low-income communities or (2) geographical areas that have the highest need for the issue areas (7 points);
- Identifies and justifies the number and population of Veterans expected to be served by the Intervention to be delivered through the PFS Agreement, and why the proposed Intervention is well-suited to the target population and context (2.5 points);
- Defines the method for determining an appropriate Veteran control group for the evaluation of Employment Outcomes (2.5 points);
- Describes any employer engagement, development, and training strategies (2.5 points);

- Describes the integration and role of mental health care professionals in the project (2.5 points);
- Describes how the PFS project will promote the Employment Outcome of a Living Wage as a result of the Intervention as compared to the control group (2 points);
- Describes how the PFS project will promote the Employment Outcome of an appreciable increase in annual earnings for Veterans as a result of the Intervention as compared to the control group (1 point);
- Describes how the applicant will sustain the replicated or expanded initiative after the conclusion of the grant period (2 points).

2. Project Partnership (up to 25 points)

- *For applicants presenting a Full Project Partnership at the time of application (25 points).* Provides the name, qualifications, and project responsibilities of each of the following partner entities committed to the project:
  - Project Coordinator
  - Evaluator
  - Investor(s) if the PFS Agreement will involve PFS financing
  - Service Provider(s). Please include as part of qualifications any experience working with Veterans.
- *For applicants presenting a Partial Project Partnership at the time of application (15 points).*
  - Provides the name, qualifications, and project responsibilities of any of the following partner entities committed to the project (7 points):
    - Project Coordinator
    - Evaluator
    - Investor(s) if the PFS Agreement will involve PFS financing
    - Service Provider(s). Please include as part of the qualifications any experience working with Veterans.
  - Describes a plan that has a high likelihood of success to transparently form a Full Project Partnership (5 points).
  - Provides evidence of experience in developing partnerships for social innovation generally and/or PFS specifically (3 points).

3. Work Plan and Budget (up to 20 points)

- Proposes a high-level work plan that provides specific, realistic, and actionable timelines tied to completion of the following tasks within the project period and includes staff roles assigned to complete the following tasks, noting whether such staff members are already hired (10 points):
  - Secure any remaining non-Federal funds for the match requirement;
  - Form a Full Project Partnership if it has not been formed yet;
  - Execute a PFS Agreement for a High-Quality PFS Project that evaluates impacts within the period of performance and potential release of Outcomes Payments;
  - Define reporting structure, data collection methods, Evaluate Outcomes and performance metrics, and evaluation approach.
- Provides a budget narrative that (10 points):
  - Breaks down total funds by:
    - Amount of total funding for indirect costs (in accordance with 2 CFR 200.414)
    - Amount of total funding for Outcomes Payments
  - Breaks down total funds by:
    - The amount of the Federal share
    - The amount of the non-Federal share (*i.e.,* matching funds)
  - Justifies the amount budgeted for Outcomes Payments in terms of an appropriate rate of return for Investors and number of Veterans to be served.

4. Expertise and Capacity (up to 17 points)

- Provides evidence of past experience among its in-house staff (and/or Board of Directors if applicant is a 501c(3) nonprofit organization) working on:
  - Pay for Success or other social finance strategies (6 points);
  - Issues specific to Veterans (1 point);
  - Workforce supports for individuals facing mental health challenges, including PTSD (1 point);
  - Demonstrated knowledge of sound vocational rehabilitation principles (1 point);
  - Knowledge of and adherence to Service-Connected Disability related privacy concerns (1 point);
  - Experience with employment focused and/or mental health service providers (1 point);
  - Data on the measurable Employment Outcomes the applicant has improved (1 point).
- Identifies and explains sufficient capacity (*i.e.,* knowledge, skill, and time) among existing in-house staff or those to be hired, to carry out its responsibilities if selected as a Recipient (3 points).
- Describes how the applicant uses data to analyze and improve its initiatives (2 points).

5. Match (up to 8 points)

- Identifies and provides evidence for the percentage of its match requirement that meets each of the four categories:

1. Funds that the applicant has secured (*i.e.,* made available if itself providing the funds or already received from others) as cash on hand to meet the match requirement;
2. Funds for which the applicant has received commitments;
3. Funds for which the applicant has received letters of interest from funders;
4. Funds the applicant has a credible plan to secure.

Points will be allocated as follows:

- Each applicant will identify the percentage of its match requirement that meets each of the four categories above.
  - For example, Applicant ABC identifies that it has secured half its match requirement and received letters of interest from funders in providing the remaining half.
- Those percentages will be multiplied as follows: by 100% for funds that are secured; by 90% for funds that have been committed; by 60% for funds that funders have expressed interest in providing; and by 30% for funds that the applicant has a credible plan to secure.
- For Applicant ABC, the reviewer would multiply 50% × 100% for the secured funds (50% × 100% = 50%) and multiply 50% × 30% for the funds supported for which the applicant has a credible plan to secure (50% × 30% = 15%).
- The resultant percentages will be added to yield the applicant's "match score multiplier." It will be no more than 100%.
  - For Applicant ABC, the "match score multiplier" would be 65% (50% + 15%).
- The "match score multiplier" will be applied to 8 points. This is the applicant's point allocation for this selection criteria.
  - For Applicant ABC, the score would be 5.2 points (65% × 8 points).

C. Review and Selection Process

VA and other Federal Agencies will review all grant applications received in response to this *Notice* according to the following steps.

1. Compliance Review

VA staff will review all applications to determine compliance with the following Threshold Requirements:

- The application is filed within the time period established in this *Notice;*
- The application is complete;
- The applicant is an eligible entity;
- The applicant demonstrates it has 10% of the match requirement as cash on hand.

The compliance review does not include reading the entire application. Applications that do not meet all compliance criteria will be determined non-compliant, and therefore will not be considered. Applications must be received through *Grants.gov*, as specified in Section IV. of this *Notice*, on or before the application deadline published in Section IV. of this *Notice*.

2. Application Review

Staff reviewers from VA, CNCS, and possibly other Federal Agencies will assess and score all compliant applications. VA will recruit, screen for conflicts of interest, and select reviewers on the basis of their expertise in Pay for Success programming and/or the Selection Criteria articulated in Section IV.A. of this *Notice*, as well as their expertise in assessing grant applications. The applications will be ranked in order from highest to lowest scores.

3. Risk Assessment Evaluation

VA staff will evaluate the risks to the program posed by each applicant, including conducting due diligence to ensure an applicant's ability to manage Federal funds. This evaluation is in addition to the evaluation of the applicant's quality of its application, and results from this evaluation will inform funding decisions. If VA determines that an award will be made, special conditions that correspond to the degree of risk assessed may be applied to the award. In evaluating risks, VA may review and consider the following:

- Financial stability;
- Quality of management systems and ability to meet the management standards prescribed in the Uniform Guidance (2 CFR Part 200);
- Applicant's record in managing previous Federal awards, grants, or procurement awards, including:
  - Timeliness of compliance with applicable reporting requirements;
  - Accuracy of data reported;
  - Validity of performance measure data reported;
  - Conformance to the terms and conditions of previous Federal awards; and
  - If applicable, the extent to which any previously awarded amounts will be expended prior to future awards.
- Information available through OMB-designated repositories of government-wide eligibility qualification or financial integrity information, such as:
  - Federal Awardee Performance and Integrity Information System (FAPIIS);
  - Dun and Bradstreet; and
  - "Do Not Pay."

Applicants may review and comment on information available through these OMB-designated repositories and VA will consider any comments made by the applicant.

- Reports and findings from single audits performed under Subpart F—Audit Requirements, 2 CFR Part 200, OMB Circular A–133, and findings of any other available audits;
- Applicant organization's annual report;
- Publicly available information, including information from the applicant organization's Web site;
- Applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on award recipients;
- Applicant's past compliance or ability to comply with Federal procurement requirements in procuring the Project Coordinator and Investor(s) in accordance with 2 CFR 200.317–200.326.

4. Applicant Clarification

Following the review process and risk assessment evaluation, VA may ask some applicants to provide clarifying information. VA staff uses clarifying information to inform funding recommendations. A request for clarification does not guarantee a grant award. If an organization does not respond by the deadline to a request for clarification, VA will remove its application from consideration. Applicants must be prepared to provide documentation of eligibility criteria and other support documentation described in the narrative, including demonstrated commitment of key experts and team. VA may conduct a site visit inspection, as appropriate.

5. Selection for Funding

VA will utilize the ranked scores of applications as the primary basis for selection, ultimately made by the delegated official who may factor in the risk assessment and clarification information provided by the applicant.

6. Applicant Feedback

VA will provide reviewer feedback to compliant applicants following announcement of the selected Recipient and grant award. This feedback will be based on the review of the original application and will not reflect information that may have been provided in response to requests for clarification.

VI. Federal Award Administration Information

A. Federal Award Notices

Although subject to change, the VA VEPFS Grant Program Office expects to announce the results of this competition by September 30, 2016. Prior to executing any funding agreement, VA will contact successful applicant(s), make known the amount of proposed funding, and verify the applicant's desire to receive the funding. In advance of grant award, successful applicants will be required to complete the VA Form 26–0967, which is a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion." Any communication between the VA VEPFS Grant Program Office and successful applicant prior to the issuance of an award notice is not authorization to begin project activities. Once VA verifies that the grant applicant is still seeking funding, VA will issue a signed and dated award notice. The award notice will be sent by U.S. Mail to the organization listed on the SF–424. Unsuccessful applicants will be notified by letter, sent by U.S. Mail to the organization listed on the SF–424. The Notice of Grant Award signed by the VA VEPFS Grant Program officer is the authorizing document for grant activities.

An awardee may not expend Federal funds until the start of the Project Period identified in the Notice of Grant Award.

B. Administrative and National Policy Requirements

The Notice of Grant Award incorporates the approved application as part of the binding commitments under the grant, as well as the requirements of applicable sections of 38 U.S.C. 3119, as well as the requirements of applicable sections of the National and Community Service Act of 1990, Public Law 101–610, The Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, Division G, Title IV, Corporation for National and Community Service, and other applicable statutes and regulations. Awards will also be subject to the General and Specific Terms and Conditions established for grants and any Special Conditions attached to the award.

Grants under this program are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance, now consolidated in 2 CFR parts 200 and VA's implementing regulation at [fill in when we hae reg cite] and CNCS's implementing regulation at Part 2205). This final guidance supersedes and streamlines requirements from OMB Circulars A–21, A–87, and A–122 (the former Cost Principles), A–110 and A–102 (the former Administrative Requirements), A–133 and A–50 (the former Audits and Audit Follow up), and A–89 (the former Federal Domestic Assistance Program Information).

C. Reporting

VA places great emphasis on the responsibility and accountability of Recipients. Applicants should be aware of the following: Upon execution of a grant agreement with VA, the Recipient(s) may have a liaison appointed by VA who will provide oversight and monitor services provided to Veterans. The Recipient(s) must provide to VA certain information, which will include but will not necessarily be limited to:

1. Quarterly Reports. The Recipient must submit to VA quarterly reports based on the Federal fiscal year, which include the following information (and any associated costs):

- Record of time and resources expended administering the VEPFS program;
- The number of Veterans served, including demographics of this population;
- Types of employment assistance provided;
- A full accounting of VEPFS administrative funds received from VA and used or unused during the quarter;
- Results of routine monitoring and any project variations;
- A comparison of accomplishments related to objectives of the award;
- An explanation for any goals not met;
- Analysis and explanation for any cost overruns. Reports must be submitted to VA no later than 30 calendar days after the close of each Federal fiscal quarter.

2. Additional Reports. VA may request additional reports if necessary to allow VA to fully and effectively assess project accountability.

3. Other Requirements. The Recipient shall conform, if necessary, to the requirements of 2 CFR part 200, Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters.

VII. Federal Awarding Agency Contact

For further information contact: Patrick Littlefield, Executive Director, VA Center for Innovation, *Patrick.Littlefield@va.gov,* (202) 256–7176.

If mailing correspondence, other than application material, please send to: VA Center for Innovation, VA Central Office, Attn: Patrick Littlefield (320), 810 Vermont Avenue NW., Washington, DC 20420.

All correspondence with the VA concerning this *Notice* should reference the title and funding opportunity number listed at the top of this solicitation. Please read the complete announcement before sending inquiries or submitting proposals. Once the *Notice* deadline has passed, the VA staff may not discuss this competition with applicants until the review process has been completed.

VIII. Other Information

A. Transparency in Grant Making

VA is committed to transparency in grantmaking. This *Notice* includes a description of the application review and selection process. In addition, the following information for compliant applications will be published on the VA and CNCS Web site within 90 business days after all grants are awarded:

- A list of all compliant applications submitted;
- Executive summaries of all compliant applications as submitted by the applicants;
- Data extracted from the Face Sheet of Standard Form 424 (SF–424);
- The program narratives for the successful application.

B. Payments of Grant Funds

Funds will be dispersed by the U.S. Department of Health and Human Services Payment Management System. A special condition will be placed on funds for Outcomes Payments that will prevent the funds from being drawn down until Employment Outcomes are achieved and verified, creating positive impact. If Employment Outcomes have been achieved per the terms of the PFS Agreement, creating positive impact, funding for Outcomes Payments may then be drawn down through the same system. Payment methods must minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the Recipient.

Appendix I: Definitions

Key Parties

- *Evaluator:* An independent entity that determines the impact of the services provided, including whether the services have resulted in Employment Outcomes that meet target levels that have been agreed to in advance of the provision of the Intervention.
- *Investor:* An person or entity that provides upfront capital to cover costs of providing services/delivering an Intervention and other associated costs before a determination has been made as to whether certain Employment Outcomes have been achieved at pre-set target levels. Investors' upfront capital may also be used to pay for the evaluation of outcomes and the costs of the Project Coordinator's work.
- *Outcomes Payor:* An entity that receives a VEPFS grant and administers payment for outcomes of an intervention that meet target levels that have been agreed to in advance of the provision of the Intervention.
- *Participant:* An eligible Veteran who receives services through a PFS project to which potential Outcomes Payments funded by a VEPFS grant have been dedicated.
- *Project Coordinator:* An entity that facilitates, coordinates, and executes a PFS Agreement to improve Employment Outcomes for Veterans with a Service-connected Disability of PTSD. With respect to other PFS projects, Project Coordinators are sometimes referred to as intermediaries. Responsibilities may include, but are not limited to, building a financial model to guide the terms of the PFS Agreement and raising capital from Investors for the PFS Agreement that involve PFS financing. For the purposes of this *Notice,* we exclusively use the term Project Coordinators to refer specifically to an organization's role in facilitating a PFS project.
- *Recipient:* An entity that receives a grant through the VEPFS program. For the purpose of the VEPFS program, the Recipient is also the Outcomes Payor.
- *Secretary:* Refers to the Secretary of Veterans Affairs.
- *Service Provider:* An entity that delivers an Intervention designed to achieve improved Employment Outcomes for Veterans with a Service-connected Disability of PTSD.
- *Veteran:* Defined as provided in 38 CFR 3.1.

Key Concepts

- *Employment Outcome:* The employment or earnings of a Participant in the Intervention or control group member after the service period. The VEPFS program will measure certain outcomes, including competitive employment, skill development, achieving a sustained period of employment, wage-earnings, and achieving employment that aligns with the interests and aptitude of the job seeker. Improving Employment Outcomes means creating positive impact in terms of these outcomes, where the results for individuals that receive the Intervention are better than the results for a valid control group that did not receive the Intervention.
- *Grant Program Assessment:* The set of activities and deliverables that assess the effectiveness of the VEPFS program in achieving the objectives articulated in Section I.C. of this *Notice.* (It is distinct from the evaluation of the Intervention that potentially triggers release of Outcomes Payments.)
- *High-Quality PFS Project:* For the purpose of this *Notice,* a PFS Project that includes the following components:
  - ○ A well-defined problem and associated target population.
  - ○ A evidence-based preventive service delivery strategy that is managed, coordinated, and guided by the Service Provider, is flexible and adaptive to the target problem and population, and has Strong Evidence.
  - ○ Well-defined, achievable potential outcome target(s) as compared to a control group that are a significant improvement on the current condition of the target population and have been agreed to by all required project partners.

○ A rigorous impact evaluation that uses an experimental or quasi-experimental design that is well-executed by an Evaluator.

○ A financial model that shows public sector value, including cost savings or efficiency as well as societal benefit, and tracks effects of the project on relevant Federal, state, and local funding sources.

○ A commitment from an entity to act as an Outcomes Payor (whose Outcomes Payments may be directed to Investors if they have covered, in part or in whole, costs associated with delivering the Intervention and constructing and managing the project).

○ If needed, a binding commitment of funds from one or more independent Investors to cover relevant operating costs of the Intervention, including administrative costs of the intermediary.

○ A PFS Agreement and any associated necessary agreements that incorporate all elements above.

- *Intervention:* A service or technology that is provided to individuals and is intended to achieve certain results. Examples of service interventions or technological interventions to improve Veteran Employment Outcomes include, but are not limited to, support services, employment coaching, mental health treatment, vocational training, occupational therapy, community engagement, and outreach.
- *Living Wage:* A wage on which it is possible for a wage earner or an individual and his or her family to live at least according to minimum customary standards in the geographic region where the individual resides.
- *Outcomes Payments:* Funds that are paid to an Investor or Service Provider and that are released only for the achievement of outcomes, as compared to those of a control group, that meet target levels that have been agreed to in advance of the provision of an Intervention (*i.e.,* if positive impact has been created by the Intervention in terms of these outcomes). When Investors have provided the upfront capital for the project, these payments generally cover repayment of the principal investment and provide a modest return on investment for any associated risks of paying for the Intervention upfront.
- *Pay for Success (PFS) Agreement:* A multi-party agreement to deliver an innovative or evidence-based Intervention intended to improve outcomes for a targeted population signed by the entities that constitute the Project Partnership.
- *Project Partnership:* A collaboration among entities that negotiate and execute a project to improve Employment Outcomes for Veterans with a Service-connected Disability of PTSD. For the purpose of the VEPFS grant program described in this *Notice,* a Project Partnership is not a distinct legal entity. The entities that may be involved in a Project Partnership include: Outcomes Payor, Project Coordinator, Evaluator, Investor, Service Provider.

○ *Full Project Partnership:* A Project Partnership that includes all of the following stakeholders:

- Evaluator;
- Investor(s) if PFS Agreement will involve PFS Financing;
- Outcomes Payor; and
- Service Provider(s).

○ Partial Project Partnership: A Project Partnership that includes the Outcomes Payor and at least one—but not all—of the following stakeholders:

- Evaluator;
- Investor(s) if PFS Agreement will involve PFS Financing; and
- Service Provider(s).
- *Service-connected Disability:* A disability that is "service-connected" as defined in 38 CFR 3.1.
- *Strong Evidence:* Evidence from previous studies, the designs of which support causal conclusions (*i.e.,* studies with high internal validity), which include enough of the range of Participants and settings to support scaling up to the state, regional, or national level (*i.e.,* studies with high external validity). The following are examples of Strong Evidence: (1) More than one well-designed and well-implemented experimental study or well-designed and well-implemented quasi-experimental study that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Appendix II: Background on the Focus of this VEPFS Competition

Given the manpower buildup for the wars in Afghanistan and Iraq and the nearing completion of the U.S. combat mission in those countries, the U.S. military implemented a troop drawdown that is planned to continue over the next few years. This has resulted in a multitude of Servicemembers transitioning out of the military and into the civilian workforce. Transitioning back into civilian life and finding employment can be challenging for many Veterans. Veterans with Service-connected Disabilities, especially mental health conditions, may experience an even more difficult transition process and encounter significant employment barriers compared to other Veterans.

PTSD, a mental health condition that can develop after exposure to a traumatic event such as warfare, is particularly pervasive among Veterans. A recent report in *JAMA* provided a detailed assessment of the Army Study to Assess Risk and Resilience in Servicemembers (Army STARRS) project and found PTSD to be 15 times higher in soldiers compared to civilians.[1] Up to 20% of Veterans from recent tours of duty have experienced PTSD.[2] As of 2015, more than 400,000 Operation Enduring Freedom (OEF), Operation Iraqi Freedom (OIF), and Operation New Dawn (OND) Veterans were seen for potential PTSD at VA facilities following their return from overseas deployments.[3]

Veterans with PTSD are likely to face challenges in the transition process and in particular with obtaining and maintaining suitable, stable employment. Symptoms of PTSD may include lack of interest in engaging in tasks and activities, anxiety, depression, cardiovascular disease, feelings of detachment from others, sleeplessness, and trouble with concentration. This vast array of symptoms combined with other employment barriers such as limited non-military vocational skills and work experience, lack of resources to assist with preparation for finding a civilian job, and a challenging job market can prevent Veterans with PTSD from successfully achieving their civilian vocational goals.

PTSD is listed in the recognized authority on mental illness diagnoses, the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM–V). The DSM–V is utilized by VA in conducting Service-connected Disability evaluations for VA compensation purposes.

A study conducted by VA in 2011 confirmed that a negative relationship exists between mental health conditions, mental health issues, and employment.[4] The unemployment rates for people with mental illness are high. People with severe mental illness have exceptionally higher rates of unemployment, between 60–100%. People with long-term psychiatric disabilities are less likely to be employed than those with long-term physical disabilities. A person's self-esteem may also be compromised during unemployment, leading to anxiety and self-doubt. The study also asserts that feelings of "helplessness" arise when a person believes he/she has little influence over important events in his/her life, such as securing meaningful work. In VA's experience the overwhelming majority of Veterans using the VA systems want to be employed, or at least be engaged in meaningful activity. However, their disability may create a barrier to employment.

Mental health providers view vocational rehabilitation and employment services as an integral part of a treatment plan for Veterans with PTSD or other mental health challenges. They report that Veterans have better outcomes while actively pursuing an employment goal.[5][6] Many people with mental health conditions view employment as central to their lives, yet fewer than 15% have jobs.[7] Thus, participation in a program that focuses on vocational needs should lead to improved functional and Employment Outcomes for Veterans with a Service-connected Disability of PTSD.

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[1] *http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4075436/.*

[2] *http://www.nytimes.com/2010/07/08/us/08vets.html?_r=0.*

[3] *http://www.publichealth.va.gov/docs/epidemiology/ptsd-report-fy2015-qtr2.pdf.*

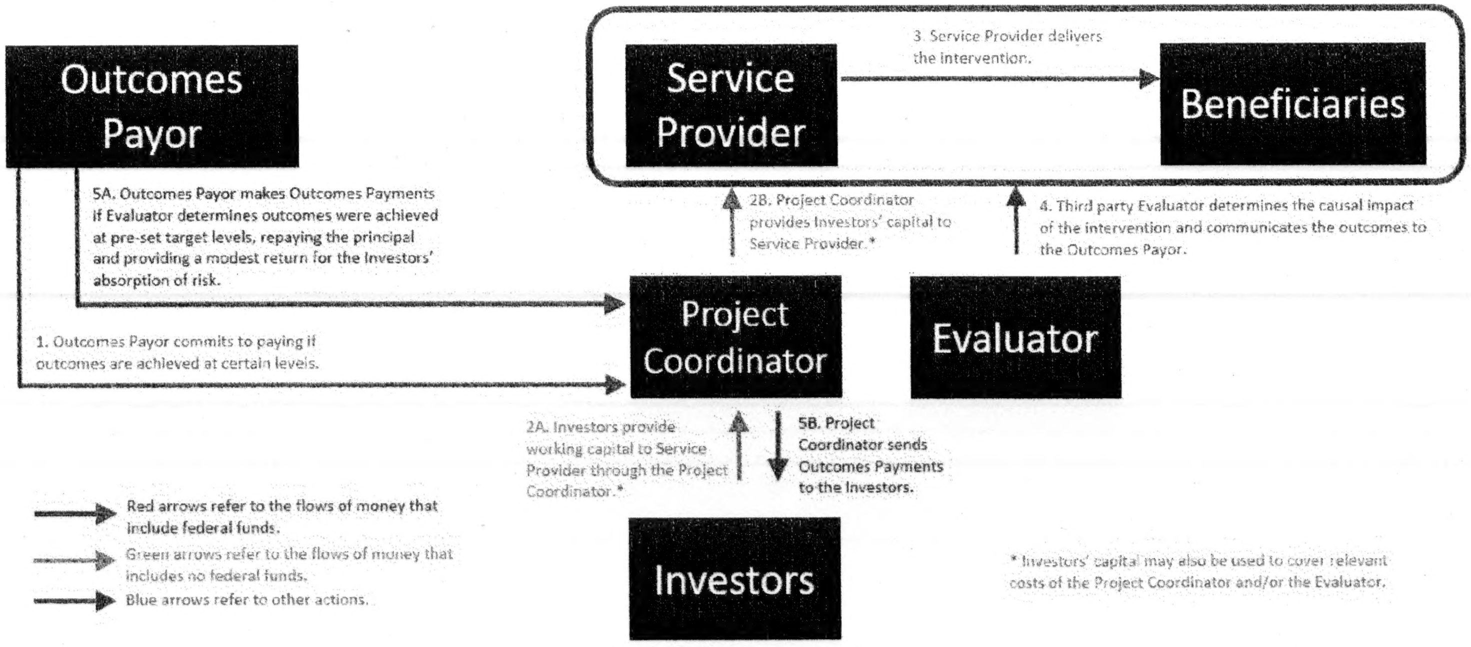
[4] *http://www.nchv.org/images/uploads/Employment_Status_of_Patients_in_the_VA_Health_System-Implications_for_Mental_Health_Services_WEB.pdf.*

[5] *http://www.nchv.org/images/uploads/Posttraumatic_stress_disorder_and_employment_in_veterans_participating_WEB.pdf.*

[6] *http://www.rehab.research.va.gov/jour/07/44/6/pdf/resnick.pdf.*

[7] *http://www.ncbi.nlm.nih.gov/pubmed/15616477.*

Appendix III: Example of a Pay for Success Contract with Pay for Success Financing


Outcomes Payor
Service Provider
Beneficiaries
3. Service Provider delivers the intervention.
5A. Outcomes Payor makes Outcomes Payments if Evaluator determines outcomes were achieved at pre-set target levels, repaying the principal and providing a modest return for the Investors' absorption of risk.
2B. Project Coordinator provides Investors' capital to Service Provider.*
4. Third party Evaluator determines the causal impact of the intervention and communicates the outcomes to the Outcomes Payor.
Project Coordinator
Evaluator
1. Outcomes Payor commits to paying if outcomes are achieved at certain levels.
2A. Investors provide working capital to Service Provider through the Project Coordinator.*
5B. Project Coordinator sends Outcomes Payments to the Investors.
Red arrows refer to the flows of money that include federal funds.
Green arrows refer to the flows of money that includes no federal funds.
Blue arrows refer to other actions.
Investors
* Investors' capital may also be used to cover relevant costs of the Project Coordinator and/or the Evaluator.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document for publication.

Dated: August 5, 2016.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2016–19304 Filed 8–12–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection; Status of Loan Account—Foreclosure or Other Liquidation, VA Form 26–0971; Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 14, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–NEW" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–NEW."

SUPPLEMENTARY INFORMATION:

Title: Status of Loan Account—Foreclosure or other Liquidation VA Form.

OMB Control Number: 2900–NEW.

Type of Review: Regular.

Abstract: Under 38 CFR 36, the holder of a delinquent vendee account is legally entitled to repurchase of the loan by VA when the loan has been continuously in default for 3 months and the amount of the delinquency equals or exceeds the sum of 2 monthly installments. When requesting the repurchase of a loan, the holder uses VA Form 26–0971. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 81 FR 15149 on March 21, 2016,

Affected Public: Individuals or households.

Estimated Annual Burden: 10 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 20.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Analyst, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–19300 Filed 8–12–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee Charter Renewals

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Advisory Committee Charter Renewals

SUMMARY: In accordance with the provisions of the Federal Advisory Committee ACT (FACA), 5 U.S.C. App. 2, and after consultation with the General Services Administration, the Secretary of Veterans Affairs has renewed the charters for the following statutorily authorized Federal advisory committees for a two-year period, beginning the on the dates listed below:

Committee name	Committee description	Charter renewed on
Advisory Committee on Prosthetics and Special-Disabilities Programs.	Authorized by 38 U.S.C. § 543. Provides advice on the administration of VA prosthetics programs and the rehabilitation research, development, and evaluation of prosthetics technology; assesses VA programs that serve Veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities.	May 18, 2016.
Advisory Committee on Homeless Veterans.	Authorized by 38 U.S.C. § 2066. Provides advice to the Secretary on benefits and services provided to homeless Veterans by the Department of Veterans Affairs.	May 19, 2016.
Geriatrics and Gerontology Advisory Committee.	Authorized by 38 U.S.C. § 7312. Provides advice to the Secretary and the Under Secretary for Health on matters pertaining to geriatrics by assessing the capability of VA health care facilities to meet all the needs of older Veterans, and by evaluating VA facilities designated as Geriatric Research, Education, and Clinical Centers.	June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Jeffrey Moragne, Committee Management Office, Department of Veterans Affairs, Advisory Committee Management Office (00AC), 810 Vermont Avenue NW., Washington, DC 20420; telephone (202) 266–4660; or email at *Jeffrey.Moragne@va.gov.* To view a copy of a VA Federal advisory committee charter, visit *http://www.va.gov/advisory.*

Dated: August 10, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–19400 Filed 8–12–16; 8:45 am]

BILLING CODE 8320–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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Part II

Department of Health and Human Services

42 CFR Parts 70 and 71
Control of Communicable Diseases; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 70 and 71

[CDC Docket No. CDC–2016–0068]

RIN 0920–AA63

Control of Communicable Diseases

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: Through this Notice of Proposed Rulemaking (NPRM), the Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) is amending its domestic (interstate) and foreign quarantine regulations to best protect the public health of the United States. These amendments are being proposed to aid public health responses to outbreaks of communicable diseases such as the largest recorded outbreak of Ebola virus disease (Ebola) in history, the recent outbreak of Middle East Respiratory Syndrome (MERS) in South Korea, and repeated outbreaks and responses to measles in the United States, as well as the ongoing threat of other new or re-emerging communicable diseases. The provisions contained herein provide additional clarity to various safeguards to prevent the importation and spread of communicable diseases affecting human health into the United States and interstate.

DATES: Written or electronic comments on the NPRM must be received by October 14, 2016.

Paperwork Reduction Act Public Comments: Submit written or electronic comments by October 14, 2016. Please see the Paperwork Reduction Act section for instructions on how to submit comments.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0068 or RIN 0920–AA63 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS E–03, Atlanta, GA 30329, ATTN: Quarantine NPRM.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All relevant comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

Comments will also be available for public inspection from Monday through Friday, except for legal holidays, from 9 a.m. to 5 p.m., Eastern Time, at 1600 Clifton Road NE., Atlanta, Georgia 30329. Please call ahead to 404–498–1600 and ask for a representative from the Division of Global Migration and Quarantine (DGMQ) to schedule your visit.

FOR FURTHER INFORMATION CONTACT: For information regarding this NPRM: Ashley A. Marrone, J.D., Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–E03, Atlanta, GA 30329. For information regarding CDC operations related to this NPRM: ATTN: Nicole J. Cohen, M.D., Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–E03, Atlanta, GA 30329. Either may also be reached by telephone 404–498–1600 or email *travelrestrictions@cdc.gov.*

SUPPLEMENTARY INFORMATION: The NPRM is organized as follows:

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VI. Summary of Notice of Proposed Rulemaking
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  9. Section 70.15 Mandatory Reassessment of a Federal Order for Quarantine, Isolation, or Conditional Release
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  4. Section 71.5 Requirements Relating To Collection, Storage and Transmission of Vessel Passenger, Crew and Voyage Information for Public Health Purposes
  5. Section 71.20 Public Health Prevention Measures To Detect Communicable Disease
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  7. Section 71.30 Payment for Care and Treatment
  8. Section 71.36 Medical Examinations
  9. Section 71.37 Requirements Relating to Issuance of a Federal Order for Quarantine, Isolation, or Conditional Release
  10. Section 71.38 Mandatory Reassessment of a Federal Order for Quarantine, Isolation, or Conditional Release
  11. Section 71.39 Medical Review of a Federal Order for Quarantine, Isolation, or Conditional Release
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  13. Section 71.63 Suspension of Entry of Animals, Articles, or Things From Designated Foreign Countries and Places Into the United States
VII. Alternatives Considered
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  A. Executive Orders 12866 and 13563
  B. The Regulatory Flexibility Act
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I. Executive Summary

A. Purpose of the Action

HHS/CDC has statutory authority (42 U.S.C. 264, 265) to promulgate regulations which protect U.S. public health from communicable diseases, including quarantinable communicable diseases as specified in Executive Order of the President. *See* Executive Order 13295 (April 4, 2003), as amended by Executive Order 13375 (April 1, 2005) and Executive Order 13674 (July 31, 2014). The need for this proposed rulemaking was reinforced during HHS/CDC's response to the largest outbreak of Ebola virus disease (Ebola) on record, followed by the recent outbreak of Middle East Respiratory Syndrome (MERS) in South Korea, both quarantinable communicable diseases, and repeated outbreaks and responses to measles, a non-quarantinable communicable disease of public health concern, in the United States. The provisions contained within this proposal will enhance HHS/CDC's ability to prevent the further importation and spread of communicable diseases into the United States and interstate by clarifying and providing greater transparency regarding its response capabilities and practices.

B. Summary of Major Provisions

Both the domestic and foreign portions of this NPRM include new proposed public health definitions; new proposed regulatory language codifying HHS/CDC's activities concerning implementation of non-invasive public health prevention measures (*i.e.,* traveler health screening) at U.S. ports and other U.S. locations (*i.e.,* railway stations, bus terminals); and proposed provisions for affording persons served with a Federal public health order (*e.g.,* isolation, quarantine) with due process, including requiring that HHS/CDC explain the reasons for issuing the order, administrative processes for appealing the order, and a mandatory reassessment of the order.

In addition, the domestic portion of this NPRM also proposes reporting requirements for commercial passenger flights of death or illness to CDC; a provision allowing for implementation of travel restrictions and issuance of travel permits by CDC for individuals under Federal quarantine, isolation, or conditional release orders, or in response to a state or local request for assistance; and new regulatory language clarifying when an individual who is moving between U.S. states is "reasonably believed to be infected" with a quarantinable communicable disease in a "qualifying stage," which determines whether such an individual may be apprehended or examined for potential infection with a quarantinable communicable disease. The foreign portion of this NPRM also proposes new regulatory authority permitting the CDC Director to prohibit the importation of animals or products that pose a threat to public health. HHS/CDC is also proposing to change the text of the current regulation to reflect modern terminology, technology, and plain language currently used by private industry, public health partners, and the public. The NPRM further authorizes expanded forms of public health monitoring, beyond an in-person visit by a public health officer, for individuals who are reasonably believed to be exposed to or infected with a quarantinable communicable disease and subject to a conditional release order. This would include monitoring through electronic and internet-based means, such as email and webcam application tools. Finally, while neither modifying nor authorizing additional criminal penalties for violations of quarantine rules and regulations, this NPRM updates regulatory language to align with existing criminal penalties set forth in statute.

C. Summary of Costs and Benefits

The regulatory impact analysis quantitatively addresses the costs and benefits associated with this NPRM. The economic impact analysis of this NPRM is subdivided into four sections.

The first analysis is of proposed *42 CFR 70.1, 42 CFR 71.1/71.4/71.5* for which the primary costs for submitting passenger and crew information to HHS/CDC are incurred by airlines and vessel operators and the primary benefit is improved public health responsiveness to assess and provide post-exposure prophylaxis to travelers potentially exposed to communicable diseases of public health concern. The most likely estimates of annual costs to airlines, vessel operators, the United States government, and public health departments are low ($35,785, range $10,959 to $65,644) because the NPRM primarily codifies existing practice or improves alignment between existing regulatory text as well as the International Civil Aviation Organization (ICAO)'s guidelines for symptoms to report. The cost estimates in this NPRM are based on an anticipated small increase in the number of illness reports delivered by airlines and processed by HHS/CDC and increased costs for airlines and vessel operators to comply with HHS/CDC orders for traveler and crew contact data, to the extent that such information is readily available and already maintained. The cost estimate also includes an increase in costs for public health departments to contact more exposed travelers due to the availability of improved contact data.

The best estimate of the annual quantified benefits of the NPRM are $117,376 (range $26,337 to $312,054) and mostly result from increased efficiencies for HHS/CDC and state and local public health departments to conduct contact investigations among travelers on an aircraft exposed to communicable diseases of public health concern, especially for measles and tuberculosis. To the extent that improved responsiveness of airlines to HHS/CDC traveler data orders may result from the implementation of the provisions proposed in this NPRM, HHS/CDC may become better able to respond to infectious diseases threats and (1) reduce case-loads during infectious disease outbreaks, (2) reduce public anxiety during disease outbreaks, (3) mitigate economic impacts on businesses as a consequence of reduced public anxiety, and (4) reduce the amount of personnel labor time to conduct large-scale contact investigations in response to a new infectious disease or one with larger scale public health and medical consequences like Ebola.

The second analysis in this NPRM is of a number of provisions that aim to improve transparency of how HHS/CDC uses its regulatory authorities to protect public health. These changes are not intended to provide HHS/CDC with new regulatory authorities, but rather to clarify the agency's standard operating procedures and policies with regard to existing regulations in 42 CFR parts 70 and 71 including due process rights for individuals. HHS/CDC believes that such clarity is an important qualitative benefit of the provisions proposed in this NPRM, but it is not able to monetize this increase in clarity in a robust way. Although the provisions updated in this NPRM do not provide HHS/CDC with new regulatory authority, the 2014–16 Ebola Entry Risk Assessment program is used the demonstrate the economic impact of the implementation of activities associated with these authorities.

The third analysis is of the proposed revisions to 42 CFR 70.13/71.30: Payment for Care and Treatment, which are not expected to lead to a change in HHS/CDC policy under which HHS/CDC may act as the payer of last resort for individuals subject to medical examination, quarantine, isolation, and conditional release under Federal orders. The primary benefit of codification is increased transparency around HHS/CDC policies to assist in paying for treatment for individuals under Federal orders. The analysis for these provisions is an examination in potential transfer payments between HHS/CDC and healthcare facilities that provide treatment to individuals under Federal orders. Because this analysis deals only with transfer payments between HHS/CDC, any marginal costs to HHS/CDC associated with a change in payments would correspond exactly to a benefit to healthcare facilities. In the absence of the NPRM, the only possible change to the current baseline is an unanticipated precedent-changing event, which would require an increase in payments from HHS/CDC to healthcare treatment facilities. The resulting extreme upper bound estimate of the provisions in the NPRM would be a benefit of $500,000 to HHS/CDC and a corresponding cost to healthcare facilities of $500,000.

The fourth analysis is of the impact of the proposed 42 CFR 71.63: Suspension of entry of animals, articles, or things from designated foreign countries and places into the United States. In this NPRM, HHS/CDC is elucidating its authority to temporarily suspend entry of animals, articles or things from designated foreign countries and places into the United States. HHS/CDC cannot predict how often such authority may be used in the future or for what animal, article or thing. HHS/CDC previously exercised this authority on June 11, 2003, "when under 42 CFR 71.32(b), HHS/CDC implemented an immediate embargo on the importation of all rodents from Africa (order Rodentia)." This embargo was necessary to halt transmission of a monkeypox outbreak in the United States, which caused 71 cases (16 hospitalized). Most cases resulted from contact with prairie dogs after monkeypox had been transmitted from African rodents to prairie dogs as part of the U.S. pet trade.

A simple economic impact analysis of this embargo is performed to demonstrate the costs and benefits of such actions, but HHS/CDC does not anticipate an increase in frequency of such actions based on the provisions included in this NPRM. The primary purpose of the analysis is to demonstrate potential costs and benefits using a realistic example. Based on this simple analysis, the annual cost associated with the embargo of African rodents is estimated to be around $19,000. An average of 959 rodents per year were imported in the three years preceding the embargo (2000–2002). In comparison a very conservative estimate of some of the cost of the monkeypox outbreak is $3.3 million inclusive of illness costs to persons contracting monkeypox in the United States, a portion of HHS/CDC and local and state health department monkeypox outbreak response costs, and a one-time cost to the U.S. domestic prairie dog market. Comparing the benefits associated with the avoidance of a re-introduction of the monkeypox virus to the United States with the annual costs to the African rodent import market, the benefits of the embargo are likely to greatly exceed the cost. The permanent restriction of African rodent imports to the United States was later codified in current 42 CFR 71.56.

II. Public Participation

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, recommendations, and data on all aspects of the proposed rule. Comments received should reference a specific portion of the rule, and inclusion of any attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. HHS/CDC will carefully consider and address all comments submitted and may revise the content of the rule as appropriate at the final rulemaking stage. HHS/CDC will publish a final rule after the comment period that reflects any content changes made as a result of comments received. As emphasized in the text below, HHS/CDC would appreciate public comment on data collection and any privacy concerns associated with this process, public health prevention measures, contact tracing, medical review process, and the availability of assistance for individuals who are indigent.

III. Background

A. Legal Authority

The primary legal authority supporting this rulemaking is sections 361 and 362 of the Public Health Service Act (42 U.S.C. 264, 265). Section 361, among other things, authorizes the Secretary[1] of HHS to make and enforce such regulations as in the Secretary's judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the states or possessions of the United States and from one state or possession into any other state or possession. Such regulations currently define *communicable disease* as an illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from an infected person or animal or a reservoir to a susceptible host, either directly or indirectly through an intermediate animal host, vector, or the inanimate environment. *See* 42 CFR 70.1, 71.1. Such regulations also define *possession* as a U.S. territory meaning any territory of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. *See* 42 CFR 70.1, 71.1. On August 16, 2000, the Secretary transferred the authority for interstate control of communicable disease, including the authority to apprehend, examine, detain, and conditionally release individuals moving from one state into another from the U.S. Food and Drug Administration (FDA) to CDC. This authority is implemented in 42 CFR part 70. FDA retained its concurrent regulatory authority under section 361 of the Public Health Service Act for purposes of regulating animals and other products that may transmit or spread communicable diseases interstate. Thus, both CDC and FDA may take actions under section 361 of the Public Health Service Act to prevent interstate spread of communicable diseases in regard to animals or products, though in practice such actions would be coordinated internally between these agencies. The Secretary took this action to consolidate regulations designed to control the spread of communicable diseases, thereby increasing the efficiency and effectiveness of both agencies. This rule is not intended to have any effect upon FDA's authority under section 361 of the Public Health Service Act. Authority for carrying out CDC's functions under sections 361–369 (42 U.S.C. 264–272) has been delegated to HHS/CDC's Division of Global Migration and Quarantine (DGMQ). Regulations that implement Federal quarantine authority are currently promulgated in 42 CFR parts 70 and 71. Part 71 contains regulations to prevent the introduction, transmission, and spread of communicable diseases into the states and territories of the United States, while part 70 contains regulations to prevent the introduction, transmission, or spread of communicable diseases from one state or U.S. territory into another.

Section 361 (42 U.S.C. 264) is divided into five subsections, (a)–(e). Section 361(a) (42 U.S.C. 264(a) states that the Secretary may make and enforce regulations as necessary to prevent the introduction, transmission, and spread of "communicable diseases" from foreign countries into the United States or from one state or possession (U.S.

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[1] 42 U.S.C. 264 and 265 by their terms grant authority to the U.S. Surgeon General. The Reorganization Plan No. 3 of 1966 abolished the Office of the Surgeon General and transferred the Surgeon General's functions to the Secretary of Health, Education, and Welfare (now Secretary of HHS). 31 FR 8855, 80 Stat. 1610 (Jun. 25, 1966). The Secretary of Health, Education, and Welfare was re-designated the Secretary of Health and Human Services by section 509(b) of Public Law 96–88, 93 Stat. 695 (codified at 20 U.S.C. 3508(b)). Although the Office of the Surgeon General was re-established in 1987, the Secretary of HHS has retained her authorities under 42 U.S.C. 264, 265.

territory) into any other state or possession (U.S. territory). By its terms, subsection (a) does not seek to limit the types of communicable diseases for which regulations may be enacted, but rather applies to all communicable diseases that may impact human health. Section 361(a) (42 U.S.C. 264(a)) further authorizes the Secretary to promulgate and enforce a variety of public health regulations to prevent the spread of these communicable diseases including: Inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be sources of dangerous infection to human beings, and other measures. In contrast, section 361(b) (42 U.S.C. 264(b)) authorizes the "apprehension, detention, or conditional release" of individuals for the purpose of preventing the introduction, transmission, and spread of a limited subset of communicable diseases, specifically those communicable diseases specified in an Executive Order of the President, upon recommendation of the Secretary in consultation with the Surgeon General. HHS/CDC refers to this limited subset of communicable diseases as "quarantinable communicable diseases" because these are the communicable disease for which by statute quarantine, isolation, or conditional release are authorized. Section 361(c) (42 U.S.C. 264(c)) states that, except as provided in subsection (d), regulations regarding apprehension, detention, examination, or conditional release shall only be applicable to individuals coming into a state or U.S. territory from a foreign country or U.S. territory. 42 U.S.C. 264(c). Thus, subsection (c) provides the basis for the quarantine, isolation, or conditional release of individuals arriving into the United States from foreign countries for the purposes of preventing the introduction, transmission, and spread of quarantinable communicable diseases (as specified by Executive Order) while subsection (d) provides the statutory basis for interstate quarantine, isolation, and conditional release measures.

Section 361(d)(2) (42 U.S.C. 264(d)(2)) imposes two main requirements on the interstate quarantine, isolation, or conditional release of individuals: (1) The qualifying-stage requirement; and (2) the requirement for an effect on interstate movement. Both of these requirements must be satisfied. Subsection (d) states that regulations may provide for the apprehension and examination of any individual "reasonably believed to be infected with a communicable disease in a qualifying stage." 42 U.S.C. 264(d)(1). As defined by this subsection, a "qualifying stage" means that the communicable disease is in "a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals" or "a communicable stage." 42 U.S.C. 264(d)(2). The subsection further states that if upon examination any such individual is found to be infected, he or she may be detained for such time and in such manner as may be reasonably necessary. 42 U.S.C. 264(d)(1). In addition to the qualifying-stage requirement, this subsection further requires a reasonable belief that the individual: (A) Be moving or about to move from a state to another state; or (B) be a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a state to another state. 42 U.S.C. 264(d)(1).

As provided for under section 361(b) (42 U.S.C. 264(b)), the Secretary's authority to allow for the apprehension, examination, detention, and conditional release of individuals is limited to those communicable diseases specified in an Executive Order of the President, *i.e.*, "quarantinable communicable diseases." These quarantinable communicable diseases currently include cholera, diphtheria, infectious tuberculosis (TB), plague, smallpox, yellow fever, and viral hemorrhagic fevers (such as Marburg, Ebola, Lassa fever, and Crimean-Congo), severe acute respiratory syndromes,[2] and influenza caused by novel or re-emergent influenza viruses that are causing or have the potential to cause a pandemic. Executive Order 13295 (April 4, 2003), as amended by Executive Order 13375 (April 1, 2005) and Executive Order 13674 (July 31, 2014).

Lastly, section 361(e) (42 U.S.C. 264(e) states that nothing in this section nor in section 363 (42 U.S.C. 266) (a different section authorizing quarantine in time of war) nor in regulations promulgated under these sections, shall be construed as superseding any provision under state law (including in regulations and provisions established by political subdivisions of states), except to the extent that such provisions conflict with the exercise of Federal authority. Accordingly, by its plain language, section 361 (42 U.S.C. 264) does not preempt state or local public health laws or regulations, except in the event of a conflict with the exercise of Federal public health authority.

In addition to section 361 (42 U.S.C. 264), HHS/CDC believes that the following Public Health Service Act sections are also relevant with respect to this rulemaking: Section 311 (42 U.S.C. 243), section 321 (42 U.S.C. 248), section 322 (42 U.S.C. 249), section 362 (42 U.S.C. 265), section 365 (42 U.S.C. 268), and sections 367–69 (42 U.S.C. 270–72). Section 311 authorizes the Secretary to accept state and local assistance in the enforcement of quarantine rules and regulations and to assist states and their political subdivisions in the control of communicable diseases. Section 321 provides for the selection, establishment, control, management, and operation of institutions, hospitals, and stations as may be necessary to carry out public health functions. Section 322 authorizes payment for the care and treatment, in a public or private facility, of individuals detained in accordance with quarantine laws. Section 362 authorizes (in accordance with regulations approved by the President [3]) suspending the entry of imports into the United States based on the presence of a communicable disease in a foreign country or place. Section 365 provides that it shall be the duty of customs officers (*e.g.*, U.S. Customs and Border Protection officers) and of U.S. Coast Guard officers to aid in the enforcement of quarantine rules and regulations. Section 367 authorizes the application of certain sections of the Public Health Service Act and promulgated regulations (including penalties and forfeitures for violations of such sections and regulations) to air navigation and aircraft to such extent and upon such conditions as deemed necessary for safeguarding public health.

As prescribed in section 368 (42 U.S.C. 271) and under 18 U.S.C. 3559 and 3571(c), criminal sanctions exist for violating regulations enacted under sections 361 and 362 (42 U.S.C. 264 and 265). 18 U.S.C. 3559 defines an offense (not otherwise classified by letter grade) as a "Class A misdemeanor" if the maximum term of imprisonment is "one year or less but more than six months." 18 U.S.C. 3571 provides that individuals found guilty of an offense may be sentenced to a fine. Specifically, an individual may be fined "not more than the greatest of"—(1) the amount specified in the law setting forth the offense; or (2) for a misdemeanor resulting in death, not more than $250,000; or (3) for a Class A misdemeanor that does not result in death, not more than $100,000. Similarly, an organization, found guilty of an offense may be fined "not more than the greatest of"—(1) the amount specified in the law setting forth the offense; or (2) for a misdemeanor resulting in a death, not more than $500,000; or (3) for a Class A misdemeanor that does not result in death, not more than $200,000. 42 U.S.C. 271 sets forth statutory penalties of up to 1 year in jail and a fine of $1,000. Therefore, it is classified as a Class A misdemeanor under 18 U.S.C. 3559. Because the alternate fines set forth under 18 U.S.C. 3571 are greater than the $1,000 set forth under 42 U.S.C. 271 (which sets a maximum penalty of not more than $1,000 or one year of jail, or both for violation of quarantine laws), and because 42 U.S.C. 271 does not exempt its lower penalties from 18 U.S.C. 3571(e), HHS/CDC plans to codify the greater penalties of 18 U.S.C. 3571(b)(5) and (c)(5) and to remove the lower penalties as stated in 42 CFR 71.2 from the regulation.

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[2] The Executive Order defines severe acute respiratory syndromes as follows: "Severe acute respiratory syndromes, which are diseases that are associated with fever and signs and symptoms of pneumonia or other respiratory illness, are capable of being transmitted from person to person, and that either are causing, or have the potential to cause, a pandemic, or, upon infection, are highly likely to cause mortality or serious morbidity if not properly controlled. This subsection does not apply to influenza."

[3] The functions of the President under sections 362 and 364(a) of the Public Health Service Act (42 U.S.C. 265 and 267(a)) have been assigned to the HHS Secretary. *See* Exec. Order 13295 (Apr. 4, 2003), as amended by Exec. Order 13375 (Apr. 1, 2005) and Exec. Order 13674 (July 31, 2014).

Lastly, section 369 (42 U.S.C. 272) provides that quarantine officers are authorized to take declarations and administer oaths in matters pertaining to the administration of quarantine laws and regulations of the United States.

B. Historical Background for This Rulemaking

On November 30, 2005, HHS/CDC published a notice of proposed rulemaking (70 FR 71892) proposing to update its existing foreign and interstate quarantine regulations to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the U.S. and from one State or U.S. territory into another. HHS/CDC received extensive comments on this proposed rulemaking. The 2005 proposed rule would have required airlines and vessels to request certain information from passengers and crew and to maintain data in an electronic database for 60 days following the culmination of the flight or voyage. The proposed rule would have also modified Federal regulations governing the apprehension, detention, examination, and conditional release of individuals reasonably believed to be infected with a quarantinable communicable disease. CDC received significant comment on the 2005 NPRM from industry that felt that the development of the passenger information data storage system was overly burdensome.

HHS/CDC also received comments contending that its procedures for quarantine and isolation lacked clarity and, in some instances, were not sufficiently protective of the individual. For instance, the 2005 proposal used the term "provisional quarantine" to denote the time period during which an individual could be held pending the issuance of a written order for quarantine, isolation, or conditional release or confirmation that the individual was not infected with a quarantinable communicable disease. The 2005 proposal also stated that "provisional quarantine" could last up to 3 business days. CDC received public comments that the term "provisional quarantine" was inconsistent with public health practice and that relying on "business days" which by definition excludes weekends and holidays was inappropriate. In response, the current proposal does not use the term "provisional quarantine," but rather uses the term "apprehension" which is a statutory term used in section 361 of the Public Health Service Act (42 U.S.C. 264(c) and (d)(1)), and is defined in this proposal as "the temporary taking into custody of an individual or group for purposes of determining whether Federal quarantine, isolation, or conditional release is warranted." Furthermore, as explained in the preamble text explaining the use of the term "apprehension," based on past experience, HHS/CDC believes that the service of a written order for quarantine, isolation, or conditional release can generally be accomplished within 24–48 hours of an apprehension. Moreover, while the 2005 proposal stated that individuals subject to an order for quarantine, isolation, or conditional release could "authorize a representative" for purposes of a medical review hearing, the proposal did not have any provision authorizing Federal appointment of such a representative for individuals who are indigent. Accordingly, in response to public comments criticizing the lack of such an appointment, the current proposal contains specific language authorizing the appointment of a "medical representative" for anyone who qualifies as "indigent." Proposed definitions for "medical representative" and "indigent" are contained in this current proposal and HHS/CDC invites public comment on these proposed definitions as well as the proposed "apprehension" activities.

HHS/CDC ultimately did not publish a final rule based on this 2005 proposal and since that time its views have been informed by the public health response to more recent communicable disease outbreaks, including Ebola, MERS, and continuing sporadic outbreaks of measles. Through the publication of today's NPRM, CDC is formally withdrawing the 2005 NPRM and submitting a new proposal for public comment. Notably, today's proposal does have some similarities with the 2005 proposal, for instance by proposing specific provisions governing the content of written Federal orders for quarantine, isolation, and conditional release, proposed procedures for administrative hearings to review these written Federal orders, and a specific provision governing the content and compiling of an administrative record. However, today's proposal is more limited in scope than the 2005 proposal and does not contain any provisions affecting Tribal lands, authorizing quarantine "in time of war," or altering HHS/CDC practices in regard to "bills of health" or yellow fever vaccination centers.

On December 26, 2012, HHS/CDC simultaneously published two direct final rules (DFR) and notices of proposed rulemaking (NPRM) to update the Scope and Definitions in both parts 70 (77 FR 75880 and 77 FR 75936) and 71 (77 FR 75885 and 77 FR 75939) to reflect modern terminology and plain language used globally by industry and public health partners. HHS/CDC did not receive significant adverse comment to either proposals and on February 25, 2013, published notices in the **Federal Register** confirming the effective dates of the DFRs (February 25, 2013) (78 FR 12621 and 78 FR 12622) and withdrawing the NPRMs from rulemaking (78 FR 12702).

IV. Rationale for Notice of Proposed Rulemaking

A timely and efficient public health response during an outbreak is critical to preventing the introduction, transmission or spread of communicable disease. Globally, there are several current and recurring communicable disease outbreaks imminently threatening human health and safety. Ebola, also known as Ebola hemorrhagic fever or Ebola virus disease, is a rare and deadly disease caused by infection with one of the Ebola virus strains. The 2014–2016 Ebola epidemic was unprecedented in its scope and complexity, and it triggered the largest public health response in CDC's history. Outbreaks begin when Ebola is transmitted from an infected animal to a human, and then from human to human. Animal species carrying viruses that are capable of infecting humans are known as reservoir hosts.[4] For Ebola, fruit bats are believed to be the reservoir.[5] [6] However, it is unclear whether the first infected human in the outbreak was infected with Ebola directly from a bat, or whether a second, intermediate animal host, such as a nonhuman primate (*e.g.*, monkeys, gorillas, and chimpanzees) or duiker (a type of forest antelope), was involved.[7] [8] The virus can be transmitted from animal to human via contact with bodily fluids of infected animals. In West Africa, it's not uncommon for people to come into contact with animals while hunting or preparing food. As of the date of publication of this NPRM, although progress has been made and vaccine trials are underway in West Africa, there is no approved vaccine for Ebola, nor is there specific approved antiviral treatment.

As of March 3, 2016, a total of 28,603 cases of Ebola and 11,301 deaths have been reported worldwide.[9] [10] The majority of cases occurred in Guinea, Liberia and Sierra Leone, with smaller outbreaks in Nigeria and Mali, and cases exported to four other countries including the United States. Liberia was first declared free of Ebola virus transmission (as defined by zero cases for at least 42 days) by the World Health Organization (WHO) on May 9, 2015; Sierra Leone on November 7, 2015; and Guinea on December 29, 2015. On January 14, 2016, WHO officially declared all three countries that were hardest-hit (Guinea, Liberia, and Sierra Leone) to be free of Ebola virus transmission for the first time since the start of the epidemic more than two years ago. However, each of the three countries has experienced one or more clusters of Ebola cases after having initially been declared free of Ebola transmission, and WHO warns that new cases could still appear because the virus can be transmitted through sexual activity with some male Ebola survivors for as long as one year after infection, and that efforts are still needed to prevent and respond to any new outbreaks.[11]

Before the 2014–2016 Ebola epidemic in West Africa, reports of Ebola exportation to other countries were rare, a fact generally attributed in part to the remote, rural locations of previous outbreaks. The establishment of Ebola transmission in 2014 in the capital cities of Guinea, Liberia and Sierra Leone, with large populations and international airports and other connections to international transportation networks, raised concerns about the potential for spread through international travel to other parts of the world. These concerns were validated by the recognition of at least eight exported cases, three of which resulted in additional spread and infection of 29 people.[12]

In October, 2014, after a case of Ebola was imported and identified in the United States from West Africa, resulting in two domestic cases and extensive contact investigations of travelers onboard aircraft and the larger community, questions were raised concerning whether HHS/CDC should strengthen the domestic response to Ebola by prohibiting travel to the United States from the three countries with widespread transmission. HHS/CDC projected that such a travel ban would cause greater harm than good to the public health response by hampering travel of responders and delivery of supplies into the region, and could paradoxically increase the risk of spread via potentially infected individuals engaging in travel through covert and circuitous travel routes. Instead, HHS/CDC recommended that public health authorities assume the responsibility for monitoring of all travelers arriving from countries with Ebola outbreaks. Because complete and timely contact information was not available for these travelers, in-person questioning at the arrival airport was required to gather such information.

Therefore, in response to the imported Ebola case, as well as consideration of potential response activities, beginning October 11, 2014, HHS/CDC and the U.S. Department of Homeland Security (DHS) began a new enhanced entry risk assessment and management program at the five U.S. international airports that routinely received approximately 90 percent of travelers from Guinea, Liberia, and Sierra Leone: New York's John F. Kennedy, Washington-Dulles, Newark Liberty, Chicago-O'Hare, and Atlanta Hartsfield Jackson.[13] This operation of unprecedented magnitude required coordination of multiple U.S. Government agencies, as well as airport authorities and health departments in all U.S. states and territories. Travelers from Mali were later added on November 17, 2014, in response to an outbreak in that country; Mali's outbreak was short-lived, and enhanced entry risk assessment and management for travelers from Mali was discontinued on January 6, 2015. Following the declaration that the outbreak had ended in Liberia and the establishment of control measures in that country, on September 21, 2015, the United States discontinued enhanced entry risk assessment and management for travelers from Liberia. On November 7, 2015, WHO declared Sierra Leone free of Ebola virus transmission and enhanced entry risk assessment and management for travelers from Sierra Leone was discontinued on December 22, 2015. In addition, Guinea was declared free of Ebola virus transmission on December 29, 2015, and enhanced entry risk assessment and management for travelers from Guinea was discontinued on February, 19, 2016, thus bringing an end to the enhanced entry risk assessment and management program in the US. Between October 11, 2014 and February 19, 2016, enhanced entry risk assessment was conducted for approximately 38,000 travelers.

A second relevant example of the importance of CDC improving the efficiency of it public health response is illustrated by CDC's response to two imported cases of MERS into the United States in 2014. While no additional transmissions occurred as a result of these importations, the subsequent investigation required the tracking and monitoring of more than 700 household, healthcare, community, and travel-related contacts, including almost 650 travelers onboard commercial aircraft. If the cost estimates in the RIA for the average cost per contact to CDC ($180) and to public health departments ($180)[14] are applied to these investigations (704 contacts), the total cost to evaluate MERS contacts would be approximately $250,000. However, this may underestimate the actual cost if state and local health departments deployed more resources per contact to locate MERS contacts more rapidly than would be the case for contact investigations for diseases more commonly reported in the United States (*e.g.,* tuberculosis). First identified and reported to cause severe acute respiratory infection in September 2012, MERS has caused infections worldwide, with at least 25 countries reporting cases to date. All reported cases have been directly or indirectly linked through travel or residence to nine countries: The Kingdom of Saudi Arabia (KSA), the United Arab Emirates (UAE), Qatar, Jordan, Oman, Kuwait, Yemen, Lebanon, and Iran. The majority of cases (~85%) have been reported from KSA, where there is strong evidence for ongoing, sporadic introductions from animals (*e.g.,* camels) to humans, followed by both healthcare-related and community human-to-human transmission. In May 2015, a case in a person who had travelled through several countries in the Arabian Peninsula and returned to the Republic of Korea started the largest outbreak of MERS outside of the Arabian Peninsula. The Korea outbreak resulted in 186 cases and 36 deaths.

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[4] "Glossary of Epidemiology Terms." Centers for Disease Control and Prevention Resource Library, 2014. Web, accessed 15 July 2014.

[5] "Ebola Hemorrhagic Fever: Ebolavirus Ecology." CDC.gov, 2014. Web, accessed 8 July 2014.

[6] Vogel, Gretchen. "Are Bats Spreading Ebola Across Sub-Saharan Africa?" Science, 2014. Vol. 344: p.140

[7] Bagcchi, Sanjeet. "Ebola haemorrhagic fever in west Africa." The Lancet, 2014. Vol. 14: p.375

[8] Baize, Sylvain, et al. "Emergence of Zaire Ebola Virus Disease in Guinea—Preliminary Report." The New England Journal of Medicine, 2014 (NEJM.ORG).

[9] *http://www.afro.who.int/en/media-centre/pressreleases/item/8252-end-of-ebola-transmission-in-guinea.html.*

[10] Case numbers obtained from the World Health Organization (*http://apps.who.int/ebola/ebola-situation-reports*).

[11] *http://www.afro.who.int/en/media-centre/pressreleases/item/8252-end-of-ebola-transmission-in-guinea.html.*

[12] Cases were exported to United States (2), United Kingdom, Nigeria, Mali (2), Senegal, Italy; further spread occurred in Nigeria, the United States and Mali.

[13] See 79 FR 63313 (October 23, 2014).

[14] Refer to the RIA for more details.

A third and historically more common example is measles. Measles is a highly contagious, acute viral illness that can lead to serious complications such as pneumonia, encephalitis, and even death. Although not a quarantinable communicable disease, every case of measles in the United States is considered a public health emergency because of its extremely high transmissibility. As a result of high vaccination coverage, measles was declared eliminated (defined as interruption of year-round endemic transmission) from the United States in 2000; however, importations from other countries where measles remains endemic continue to occur, which can lead to clusters of measles cases in the United States in pockets of unvaccinated persons. Of note, an unprecedented outbreak that originated in late December 2014 in Orange County, California resulted in 125 cases; measles cases associated with this outbreak were reported in eight U.S. states, Mexico, and Canada. Between 2010 and 2014, HHS/CDC investigated 91 measles exposures on international or interstate flights, which required time-consuming and labor-intensive location and evaluation of more than 4700 individuals, resulting in the identification of 12 cases of onward transmission.[15]

Global public health authorities have clearly indicated, and evidence has shown, that Ebola, MERS, and measles could spread between countries, and a re-emergence after the current outbreaks are controlled is always a risk. Additionally, although public health responses to measles have become routine over the past decade, the recent unprecedented outbreak in a large U.S. tourist destination with high potential for onward travel by exposed individuals identified greater danger for measles becoming reestablished in the United States in communities with lower rates of immunization. These three examples demonstrate the need for a more timely, efficient, and complete public health response, so that CDC can better protect individuals and prevent the further importation and spread of communicable disease.

This NPRM clarifies and provides greater transparency regarding the tools HHS/CDC uses to identify and respond quickly and effectively to prevent introduction and spread of these and other communicable diseases in the United States. Currently, these processes are governed by standard and internal operating procedures and policies, based upon broad statutory authorities. For instance, it is anticipated that explicit regulatory authority, as proposed in this notice of proposed rulemaking, may lead to quicker and more accurate illness reporting, which would enhance HHS/CDC's ability to evaluate an ill traveler and assess the public health risk. The current definition of "ill person" does not include the range of signs and symptoms for many of the quarantinable communicable diseases, including Ebola and MERS, nor does it allow for detection of new or emerging communicable diseases. Currently the broader range of signs and symptoms is already requested on a voluntary basis; however, the current regulations do not require mandatory reporting of ill persons as defined by this broader definition, thus requiring HHS/CDC to rely on the voluntary compliance of conveyance operators. Given the grave consequences for mortality and morbidity of introducing and spreading these diseases, a strengthening of this reporting requirement via mandatory reporting according to the revised definition of an ill person, as described in this NPRM, is essential. This is validated by several recent instances of individuals traveling interstate while symptomatic with MERS, Ebola, Lassa fever, and measles. Conducting contact investigations on interstate flights is labor-intensive and often inaccurate and untimely given the current quality of passenger data. This NPRM through proposed section 42 CFR 70.11 would improve HHS/CDC's ability to receive reports of symptomatic interstate travelers allowing for more efficient evaluation and enabling HHS/CDC to expedite its domestic response activities, (*e.g.* distributing Passenger Locator Forms) to more quickly and efficiently locate and assess exposed travelers, and mitigate the spread of disease. The proposed updated definition of "ill person" also includes a provision for the CDC Director to revise the symptom definition as needed in response to a newly identified communicable disease; this will greatly enhance HHS/CDC's ability to respond rapidly to emerging public health threats. By expanding the current regulatory definition to include the requested symptoms, CDC is improving the sensitivity of the system that requires reporting of ill travelers on conveyances, allowing CDC to then make a determination of whether the illness may represent a communicable disease of public health concern.

Since 2007, HHS/CDC has employed basic tools, such as public health travel restrictions list ("Do Not Board list") to prevent travel by commercial airline of individuals infectious with communicable diseases that pose a public health threat to the traveling public.[16] During the 2014–2016 Ebola epidemic, HHS/CDC revised the criteria for use of Federal travel restrictions to address the need to prevent travel by persons potentially exposed to Ebola or other communicable diseases but not yet considered contagious. The updated criteria provided HHS/CDC with greater flexibility to control the movement of persons who pose a public health threat during travel and to apply Federal travel restrictions in support of outbreak control. In certain circumstances, HHS/CDC has allowed people contagious with or exposed to serious communicable diseases to travel interstate if this can be done in a manner that does not expose the public (*e.g.,* by private vehicle). However, the needs of the individual to engage in travel must be carefully weighed against the public health risk due to the potential lack of public health oversight, especially during travel over long distances or crossing multiple states. For this reason, during the 2014–2016 Ebola epidemic, HHS/CDC recommended against long-distance travel by private vehicle for people with certain types of exposures to Ebola.

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[15] CDC. Measles Outbreak—California, December 2014–February 2015. Morb Mortal Wkly Rep. 2015; 64(06): 153–154. *https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6406a5.htm.*

[16] See Criteria for Requesting Federal Travel Restrictions for Public Health Purposes, Including for Viral Hemorrhagic Fevers, 80 FR 16,400 (Mar. 27, 2015).

State and local public health authorities, relying on their own legal processes, enforced these recommendations by imposing their own movement restrictions on individuals potentially exposed to Ebola. While HHS/CDC could similarly impose movement restrictions for individuals reasonably believed to be infected with a quarantinable communicable disease through the issuance of a Federal order for isolation, quarantine, or conditional release, codifying in regulation a separate, formal process to issue interstate travel permits for individuals subject to controlled movement allows for greater transparency and public understanding of what actions HHS/CDC may take to condition an individual's travel on the observance of public health measures to assure the safety of other travelers and communities.

In the last century, 60% of newly identified infectious diseases in humans globally were zoonotic (transmitted from animals to humans). As mentioned above, evidence indicates that both MERS and Ebola are associated with animal reservoirs (camels and bats, respectively). It is possible any future outbreaks may be linked to animal sources for which an emergency ban on certain animals or cargo (*e.g.,* animal products) would be necessary to protect the public. In the past, HHS/CDC has issued import embargoes either through publication of an interim final rule (*e.g.,* 68 FR 62353 (Nov. 4, 2003) (imposing restrictions on African rodents)) or through issuance of an emergency order under the authority of 42 CFR 71.32(b) (allowing for the application of public health measures to arriving carriers and animals, articles, or things found onboard such arriving carriers) (*See http://www.cdc.gov/sars/media/civet-ban.html*).

Codifying in regulation a provision explicitly relating to HHS/CDC's ability to impose an import embargo provides greater transparency and will greatly enhance HHS/CDC's ability to protect the public from ongoing hazardous importations. We note that while proposed § 71.63 serves to clarify CDC's authority to temporarily ban certain imports, this is not a new authority and will not alter current CDC practices. HHS/CDC will continue to coordinate in advance with other Federal agencies that have overlapping authority, as may be necessary to implement and enforce this provision.

Finally, this NPRM contains due process provisions (requirements relating to administrative records, quarantine, isolation, conditional release, medical examination, and agreements; authorization for payment for medical care and treatment; and an explanation of applicable criminal penalties) which are intended to inform the U.S. public of what steps HHS/CDC might take to protect public health during an outbreak while safeguarding the rights of the individual. Although these processes have been implemented through internal standard operating procedures, these procedures have not been codified, explicitly set forth in regulation, and made publicly available until today. These provisions are needed to provide transparency and assure the traveling public and any individual potentially placed under a Federal public health order that HHS/CDC will protect their individual liberties.

The provisions in this NPRM describe the regulatory activities that HHS/CDC may undertake to reduce and mitigate the risk of outbreaks of Ebola, MERS, measles, and other communicable diseases in the United States. Greater transparency and public understanding of its processes, authorities, and procedures, will allow HHS/CDC to respond more effectively to these public health emergencies.

V. Ongoing Efforts With U.S Department of Homeland Security (DHS)/U.S. Customs and Border Protection (DHS/CBP) To Improve Passenger Data Collection

CDC is currently working with DHS/CBP to update existing DHS/CBP regulations that will require the electronic collection and submission of additional passenger and crew contact information to the Advance Passenger Information System (APIS) which would streamline the collection of additional data to minimize the burden on airline operators and travelers. We also plan to work with DHS/U.S. Coast Guard (USCG) to develop a comparable electronic data collection mechanism for vessels and their passengers and crew. Therefore this NPRM also informs airline and vessel industry, as well as travelers that HHS/CDC is working with DHS on expanding the data elements currently required and collected via APIS (*e.g.,* seat or cabin number, primary and secondary phone numbers, address information, and email address) that would be reported to CBP regarding passengers and crew on applicable international flights and vessel voyages. These data and additional contact information collected by DHS would then be shared with HHS/CDC as necessary for use in public health contact tracing. We have included the chart below to reflect the data elements of public health interest that are collected under current CDC manifest order practice, which HHS/CDC seeks to codify through this regulation.

Currently required data elements of public health interest	DHS/CBP–APIS [17]	CDC—manifest order
Full name (last, first, and, if available, middle or others)	X	X
Date of Birth	X	X
Sex	X	X
Country of Residence	X	X
If a passport is required; passport number, passport country of issuance, and passport expiration date	X	X
Travel document information	X	X
Name of Airline	X	X
Flight number	X	X
City of departure	X	X
Departure date	X	X
City of arrival	X	X
Arrival date	X	X

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[17] See 19 CFR 122.49a for a list of the elements CBP requires for inbound commercial air travel.

Currently required data elements of public health interest	DHS/CBP–APIS[17]	CDC—manifest order
Address while in the United States (number and street, city, state, and zip code), except that U.S. citizens and lawful permanent residents will provide address of permanent residence in the U.S. (number and street, city, state, and zip code; as applicable)	([18])	X
Primary contact phone number to include country code		X
Secondary contact phone number to include country code		X
Email Address		X
Seat or Cabin Number		X

V. Summary of Notice of Proposed Rulemaking

A. Updates to Part 70

1. § 70.1 General Definitions

Section 70.1 contains the definitions used in this NPRM. The NPRM proposes new or updated definitions to be consistent with modern quarantine concepts and current medical and public health principles and practice.

Apprehension

Under section 361(d)(1) of the PHS Act (42 U.S.C. 264(d)(1)), HHS/CDC may promulgate regulations that provide for the apprehension and examination of any individual reasonably believed to be infected with a quarantinable communicable disease in a qualifying stage. In addition, HHS/CDC must reasonably believe that the individual is moving or about to move between states or constitutes a probable source of infection to others who may be moving between states. Thus, HHS/CDC believes that it is important to define for the public what is meant by the term ''apprehension.'' *Apprehension* means the temporary taking into custody of an individual or group for purposes of determining whether quarantine, isolation, or conditional release is warranted.

Although each instance is unique, an apprehension will typically occur at the request of a state or local health department or in other time-sensitive situations, such as at a U.S. port of entry, where it is necessary for HHS/CDC to take immediate action to protect public health. The factors that may give rise to an apprehension are discussed in detail in the preamble section discussing the definition of ''reasonably believed to be infected, as applied to an individual.'' When an apprehension occurs, the individual is not free to leave or discontinue his/her discussion with an HHS/CDC public health or quarantine officer. In some cases, an apprehension may last from twenty minutes to one to two hours if, for instance, based on a public health assessment, HHS/CDC is able to quickly rule out the presence of a quarantinable communicable disease. In certain circumstances, the individual may remain apprehended pending confirmation that he or she is not infected or not reasonably believed to be infected with a quarantinable communicable disease. If it is necessary to issue the individual a Federal order for quarantine, isolation, or conditional release, the individual will remain apprehended pending the service of the written order. The factors that may give rise to an order for quarantine, isolation, or conditional release are discussed in detail in the preamble section discussing the definition of ''reasonably believed to be infected, as applied to an individual.'' Based on past experience, HHS/CDC believes that a written Federal order may be served to an individual within 24–48 hours of an apprehension. These timeframes are merely offered as guidance and HHS/CDC believes that the facts and circumstances of each case will dictate the expected length of an apprehension. Generally, however, HHS/CDC does not expect that the typical public health apprehension will last longer than 72 hours. It is not HHS/CDC's intent through this definition to allow for extended apprehensions absent the issuance of a Federal order for quarantine, isolation, or conditional release. HHS/CDC requests public comment concerning the expected apprehension period (no longer than 72 hours), and whether there are any public concerns with the absence of a specific maximum apprehension period in the regulation.

Communicable Period

HHS/CDC is proposing to revise the definition of communicable period in part 70. As listed in the table above, under the new definition, communicable period would mean the period during which an infectious agent may be transmitted either directly or indirectly from an infected individual to another individual. Under section 361 (b) and (d) of the Public Health Service Act, to authorize the quarantine, isolation, or conditional release of any individual traveling interstate, HHS/CDC must reasonably believe that an individual is infected with a quarantinable communicable disease in a qualifying stage. 42 U.S.C. 264(b) and (d)(1). As defined by the statute, a ''qualifying stage'' means that the communicable disease is in ''a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals'' or ''a communicable stage.'' Thus, HHS/CDC believes that it is necessary to provide a clear definition for what it means for an individual to be in the communicable stage of a communicable disease. HHS/CDC's proposed revised definition is consistent with how this term is commonly understood in the public health community.

There are numerous resources to describe the communicability of specific diseases. CDC's Health Information for International Travel (also known as the Yellow Book) provides the public with general guidance regarding the expected length of communicability for many quarantinable communicable diseases. The most current version is available on CDC's Web site. For more information, please see *http://wwwnc.cdc.gov/travel/yellowbook/2016/table-of-contents.*

Agreement

HHS/CDC is proposing a definition for ''agreement'' which refers to an agreement entered into between the CDC and an individual expressing agreement between the parties that the individual will observe public health measures authorized under this part, as the CDC considers reasonably necessary to protect the public's health, including quarantine, isolation, conditional release, medical examination, hospitalization, vaccination, and treatment. An explanation of the reasons for why HHS/CDC is including a regulatory provision explicitly allowing for agreements is discussed in detail in the preamble section explaining proposed § 70.8. HHS/CDC believes that the proposed definition is consistent with public health practice and common usage.

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[18] Under APIS, address while in the United States (number and street, city, state, and zip code), except that this information is not required for U.S. citizens, lawful permanent residents, or persons who are in transit to a location outside the United States.

Contaminated Environment

HHS/CDC is proposing to define a contaminated environment as meaning the presence of an infectious agent on a surface, including on inanimate articles, or in a substance, including food, water, or in the air. Exposure to a contaminated environment is one method through which an individual may become infected with a communicable disease. Thus, HHS/CDC believes that it is important to define this term for transparency and to enhance the public's understanding of HHS/CDC's practices. HHS/CDC believes that the term is being defined consistently with public health practice and common usage.

Conditional Release

HHS/CDC is proposing to define conditional release to mean "surveillance" as that term is proposed in 42 CFR 71.1 and update the definition to include public health supervision through in-person visits by a public health official (or designee), telephone, or through electronic or internet-based monitoring as that term is defined. Surveillance under § 71.1 is currently defined as temporary supervision by a public health official (or designee) of an individual or group, who may have been exposed to a quarantinable communicable disease, to determine the risk of disease spread. HHS/CDC is proposing to expand the definition of conditional release to clarify that it may include electronic or internet-based monitoring in addition to in-person visits by a public health official or telephone reporting by the individual under a conditional release order. A proposed definition for electronic or internet-based monitoring has been included as part of this proposal and is discussed below. In general, such monitoring may include electronic or internet-based systems, such as video chat and voice calls from computers, tablets and mobile devices. This language is intended to be broad and would apply to any new or existing technologies that would allow for the public health supervision and monitoring of an individual under a conditional release order.

Electronic or Internet-Based Monitoring

HHS/CDC has proposed a definition for "electronic or internet-based monitoring" that defines this term as referring to mechanisms or technologies allowing for the temporary public health supervision of an individual under conditional release, including electronic mail, SMS texts, video conference or webcam technologies, integrated voice-response systems, entry of information into a web-based forum, wearable tracking technologies, and other mechanisms or technologies as determined by the Director or supervising health authority. HHS/CDC specifically solicits comment regarding whether this proposed definition is sufficiently broad to apply to any new or existing technologies that would allow for the public health supervision and monitoring of an individual under a conditional release order. HHS/CDC also solicits comment regarding whether the proposed definition raises any privacy implications for an individual who is reasonably believed to be infected with a quarantinable communicable disease and who is subject to a conditional release order.

Ill Person

HHS/CDC is including a proposed definition of "ill person" under part 70 to facilitate identification of communicable diseases of public health concern. Changes in the ill person definition, including the revised temperature threshold and inclusion of persistent diarrhea and vomiting, are particularly aimed at improving HHS/CDC's ability to detect Ebola. The NPRM definition of "ill person" focuses on the signs and symptoms of communicable diseases of public health concern to ensure such diseases are recognized and reported.

However, HHS/CDC is also including a provision in this NPRM to allow it to include additional signs and symptoms of illness in case our understanding of the recognizable symptoms of communicable diseases of public health concern, such as Ebola, may change or to respond to communicable diseases that may emerge as future concerns. Notice of such additional signs and symptoms will be published in the **Federal Register**.

HHS/CDC has crafted the proposed definition of "ill person" in such a way that it should be understood by non-medically trained crewmembers and used to discern illnesses of public health interest that HHS/CDC would like to be made aware of according to 42 CFR 70.4 from those that it does not (*e.g.,* common cold), while more closely aligning the definition with the symptoms reporting guidelines published by ICAO in Note 1 to paragraph 8.15 of Annex 9 to the Convention on International Civil Aviation. To further assist flight crewmembers (and vessel crewmembers under part 71) in identifying individuals with a reportable illness, HHS/CDC provides the following in-depth explanations and examples of the communicable diseases that such signs and symptoms might indicate. Note that these explanations also apply to the definition of "ill person" under part 71.

1. Fever: This term means that the person has a measured temperature of 100.4 °F (38°C) or greater, feels warm to the touch, or gives a history of feeling feverish. While a measured temperature is the preferable and more accurate method to determine whether a person has a fever, it is not always possible to obtain. The measured temperature also may not reflect the presence of a recent fever, for example, if the individual has taken a fever-reducing medication. For these reasons, the revised "ill person" definition includes other methods that may be used by crewmembers as proxies for a measured temperature. If it is not feasible or advisable to touch the individual or if the individual does not disclose a history of feeling feverish, then, while not definitive, the observer should consider his/her appearance, such as having a flushed face, glassy eyes, or chills as possible indications of the presence of a fever. A self-reported history of feeling feverish is included in the event that the ill person has taken medication that would lower the measured temperature or if the fever fluctuates as part of the natural course of the disease.

2. Skin rash: This term means that the individual has areas on the skin with multiple red bumps; red, flat spots; or blister-like bumps filled with fluid or pus that are intact or partly crusted over. The rash may be discrete or may run together, and may include one area of the body, such as the face, or more than one area. The presence of skin rash, along with fever, may indicate that the traveler has measles, rubella (German measles), varicella (chickenpox), meningococcal disease, or smallpox.

3. Difficulty breathing: This term means that the individual is gasping for air, is unable to "catch" his/her breath, is breathing too fast and shallow to get enough air, or cannot control his/her own secretions. These symptoms may be apparent or self-reported if not obvious. Difficulty breathing, along with fever, may indicate a traveler has tuberculosis, diphtheria, influenza with pandemic potential, or a severe acute respiratory syndrome.

4. Persistent cough: This term means that the cough is frequent and severe

enough that it catches the attention of the crewmember, or the individual or another passenger voices concern about it. Persistent cough, along with fever, may indicate the traveler has pertussis/whooping cough (vomiting may occur at the end of a coughing fit), tuberculosis, severe acute respiratory syndrome, or influenza with pandemic potential.

5. Decreased consciousness or confusion of recent onset: This term means that the individual is not fully aware of his/her surroundings or may be unusually difficult to awaken. The individual may appear to be confused or disoriented. Decreased consciousness, along with fever, may indicate the traveler has meningococcal disease, another serious neurological infection, or serious infection in another body system.

6. Bruising or bleeding (without previous injury): This term means that the person has noticeable and unusual bruising or bleeding from gums, ears, nose or areas on skin for which there is no obvious explanation. Unexplained bruising or bleeding, along with fever, may indicate the person has a hemorrhagic fever, such as Ebola, or plague.

7. Persistent diarrhea: This term means that the diarrhea is frequent and severe enough that the air crewmember notices, for example, that the person has been to the restroom numerous times, or the individual or another passenger voices concern about it. Persistent diarrhea may indicate the person has a foodborne or waterborne infection such as norovirus or cholera, or another serious communicable disease, such as Ebola. Many infections that cause persistent diarrhea can be spread easily from person to person, either directly or indirectly through food or water, and cause large outbreaks.

8. Persistent vomiting: This term means that the individual has vomited two or more times (not due to air or sea sickness) and either expresses concern to the air/vessel crew or comes to the attention of others onboard (air/vessel crew or passengers). Persistent vomiting may indicate the person has a foodborne or waterborne infection such as norovirus, or another serious communicable disease, such as Ebola.

9. Headache with stiff neck: This term means that the individual is self-reporting a headache accompanied by difficulty moving his/her neck. These symptoms may indicate that the individual has bacterial meningitis, such as meningococcal meningitis. Meningococcal meningitis has a high death rate and a significant proportion of survivors have residual impairments, such as deafness or injury to the brain. Individuals in close contact with ill persons with meningococcal disease are at elevated risk for contracting the disease.

10. Obviously unwell: HHS/CDC has included this description into the proposed definition of "ill person" as it is used in ICAO guidelines to aid crewmembers in the identification of symptoms of communicable disease. *See Note 1 to paragraph 8.15 of Annex 9 to the Convention on International Civil Aviation.*

Indigent

CDC conducts a mandatory reassessment 72 hours after the service of all Federal orders for quarantine, isolation, or conditional release. A medical review is part of the administrative appeals process whereby an individual under a Federal order may request a separate medical review of his/her case after the mandatory reassessment is complete. HHS/CDC is defining the term "indigent" for purposes of appointing a medical representative for indigent individuals placed under a Federal order of quarantine, isolation, or conditional release who request a medical review and appointment of a medical representative.

An indigent individual is defined as one whose annual family income is below 150% of the applicable poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2) or liquid assets totaling less than 15% of the applicable poverty guidelines if no income is earned. The poverty guidelines are updated periodically by HHS and are used for determining eligibility for a number of Federal, state, local, and private programs. The poverty guidelines for 2016 are published at 81 FR 4036 (Jan. 25, 2016). The medical review process is explained in more detail below. CDC specifically requests public comment on whether the use of this standard definition is an appropriate threshold to determine whether an individual cannot afford representation and therefore should be appointed a medical representative at the government's expense.

Medical Examination

Under section 361(d)(1) of the PHS Act (42 U.S.C. 264(d)(1)), HHS/CDC may promulgate and enforce regulations concerning the apprehension and examination of any individual reasonably believed to be infected with a quarantinable communicable disease in a qualifying stage who is, or is reasonably expected to be, moving or about to be moving between states or constitutes a probable source of infection to others who may be moving between states. Thus, HHS/CDC believes that it is important to define for the public what is meant by a medical examination. Under this NPRM, we define *Medical examination* to mean the assessment of an individual by an authorized health worker to determine the individual's health status and potential public health risk to others and may include the taking of a medical history, a physical examination, and the collection of human biological samples for laboratory testing. Medical examination may be authorized as part of a Federal order for quarantine, isolation, or conditional release. The process for ordering a medical examination is explained in more detail in the portion of the preamble discussing that substantive provision at § 70.12.

Medical Representative

HHS/CDC is providing an opportunity for any individual under a Federal order of quarantine, isolation, or conditional release to request a medical review. As part of this process, the individual under the Federal order may choose anyone to represent him/her at the medical review at his/her own expense or to represent himself/herself. However, in the case of an individual who is indigent and cannot afford his/her own representative, HHS/CDC will appoint at government expense a medical representative to assist the indigent individual with the presentation of evidence during the medical review. Appointments by HHS/CDC will be made only if the individual qualifies as an indigent, requests a medical review, and specifically requests the appointment of a medical representative. Again, individuals who do not qualify as indigent may choose to be represented by anyone at their own expense or to represent themselves at the medical review. Because HHS/CDC views the medical review process as a medical fact-finding, it has defined the "medical representative" in terms of the relevant medical qualifications. *Medical representative* means a physician, nurse practitioner, or similar medical professional qualified in the diagnosis and treatment of infectious diseases who is appointed by the HHS Secretary or CDC Director to assist an indigent individual under Federal quarantine, isolation, or conditional release with a medical review. The medical representative's role will be to assist the indigent individual with the examination of witnesses and the presentation of factual and scientific evidence during the medical review. The medical representative and the medical reviewer will not be the same individual. Individuals who do not qualify as indigent may choose to be represented by anyone at their own expense or to represent themselves at the medical review.

Medical reviewer means a physician, nurse practitioner, or similar medical professional qualified in the diagnosis and treatment of infectious diseases who is appointed by the HHS Secretary or CDC Director to conduct a medical review. The medical reviewer may be an HHS or HHS/CDC employee, but only if the employee differs from the HHS/CDC official who issued the Federal order for quarantine, isolation, or conditional release. The medical reviewer's role will be to review the medical or other evidence presented, make medical or scientific findings of fact, and issue a recommendation to the CDC Director concerning whether the quarantine, isolation, or conditional release should be continued, rescinded, or modified. The medical reviewer and the medical representative will be different individuals.

Non-Invasive

The definition of *non-invasive* has been added to this NPRM to provide the public with reasonable assurances and expectations regarding what measures may be employed as part of a public health risk assessment or following reporting of an ill traveler. We define non-invasive as "procedures conducted by an authorized health worker or other individual with suitable training and includes the visual examination of the ear, nose, and mouth; temperature assessments using an ear, oral, or cutaneous or noncontact thermometer or thermal imaging; auscultation; external palpation; external measurement of blood pressure; and other procedures not involving the puncture or incision of the skin or insertion of an instrument or foreign material into the body or a body cavity, except the ear, nose, or mouth." HHS/CDC specifically requests comment concerning this definition including whether the definition aligns with common perceptions of what constitutes non-invasive procedures that may be conducted outside of a traditional clinical setting.

Precommunicable Stage

Under section 361(d) of the Public Health Service Act, to authorize the quarantine, isolation, or conditional release of an individual traveling interstate, CDC must reasonably believe that the individual is infected with a communicable disease in a qualifying stage. 42 U.S.C. 264(d)(1). As defined by the statute, a "qualifying stage" means that the communicable disease is in "a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals" or "a communicable stage." Thus, HHS/CDC believes that it is necessary to define the precommunicable stage of a communicable disease to adequately inform the public of when quarantine, isolation, or conditional release may be authorized. HHS/CDC defines precommunicable stage to mean the stage beginning upon an individual's earliest opportunity for exposure to an infectious agent and ending upon the individual entering or reentering the communicable stage of the disease or, if the individual does not enter the communicable stage, the latest date at which the individual could reasonably be expected to have the potential to enter or reenter the communicable stage. For instance, a patient diagnosed with multidrug-resistant or extensively drug-resistant tuberculosis who is not currently infectious but has not been adequately treated for the disease and is thus considered to be at high risk of relapse to an infectious state would be in the "precommunicable stage" of the disease. For clarity, and to be consistent with statutory language, we have also updated the definition of "incubation period" to mean the time from the moment of exposure to an infectious agent that causes a communicable disease until signs and symptoms of the communicable disease appear in the individual or for a quarantinable communicable disease the precommunicable stage of the disease.

While it is important that HHS/CDC maintain flexibility to evaluate each case individually regarding the length of quarantine, CDC's Health Information for International Travel (also known as the Yellow Book) provides the public with general guidance regarding the expected incubation period for many quarantinable communicable diseases. The most current version is available on CDC's Web site. For more information, please see *http://wwwnc.cdc.gov/travel/yellowbook/2016/table-of-contents.*

Public Health Emergency

Under section 361(d) of the Public Health Service Act, in order to authorize the quarantine, isolation, or conditional release of any individual traveling interstate, CDC must reasonably believe that an individual is infected with a communicable disease in a qualifying stage. 42 U.S.C. 264(d)(1). As defined by this subsection, a "qualifying stage" means that the communicable disease is in "a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals" or "a communicable stage." 42 U.S.C. 264(d)(2). While the phrase "public health emergency" also appears under section 319 of the Public Health Service Act (42 U.S.C. 247d(a)), the use of the same phrase in both sections 319 and 361(d)(2) are not necessarily synonymous. Accordingly, HHS/CDC felt it was important to define "public health emergency" as used under section 361(d)(2) to provide the public with a clear understanding of HHS/CDC's authority for interstate quarantine, isolation or conditional release. *Public health emergency* as used in this part means any communicable disease event as determined by the CDC Director with either documented or significant potential for regional, national, or international communicable disease spread or that is highly likely to cause death or serious illness if not properly controlled; or any communicable disease event described in a declaration by the Secretary pursuant to § 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)); or any communicable disease event the occurrence of which is notified to the World Health Organization, in accordance with Articles 6 and 7 of the International Health Regulations, as one that may constitute a Public Health Emergency of International Concern; or any communicable disease event the occurrence of which is determined by the Director-General of the World Health Organization, in accordance with Article 12 of the International Health Regulations, to constitute a Public Health Emergency of International Concern; or any communicable disease event for which the Director-General of the World Health Organization, in accordance with Articles 15 or 16 of the International Health Regulations, has issued temporary or standing recommendations for purposes of preventing or promptly detecting the occurrence or reoccurrence of the communicable disease. HHS/CDC specifically requests public comment on this definition and its utility in identifying communicable diseases that "would be likely to cause a public health emergency if transmitted to other individuals" under 42 U.S.C. 264(d)(2)(B).

Public Health Prevention Measures

Under this NPRM, *Public health prevention measures* means the assessment of an individual through non-invasive procedures and other means, such as observation, questioning, review of travel documents, review of other available records to determine the individual's health status and potential public health risk to others (*i.e.*, passenger screening). HHS/CDC believes that this definition is consistent with how public health risk assessments are generally conducted at U.S. ports and other locations, including by HHS/CDC personnel. HHS/CDC is publishing this definition to describe its authority to conduct public health prevention measures and is not effecting a change in operations.

Qualifying Stage

Under this NPRM, "qualifying stage" means the communicable stage of a quarantinable communicable disease, or the precommunicable stage of the quarantinable communicable disease, but only if the quarantinable communicable disease would be likely to cause a public health emergency if transmitted to other individuals. This NPRM also separately defines "communicable stage" and "precommunicable stage." HHS/CDC believes that these definitions are consistent with public health practice and the requirements of 42 U.S.C. 264(d)(2).

Reasonably Believed To Be Infected, as Applied to Individuals

HHS/CDC is including this definition in this NPRM for transparency and so that the public understands the factors taken into consideration when HHS/CDC makes a determination to issue a Federal order for quarantine, isolation, or conditional release. By adding this definition, HHS/CDC is not changing its operations, but rather is codifying and providing an explanation to the public. Under this NPRM, *reasonably believed to be infected, as applied to an individual,* means specific articulable facts upon which a public health officer could reasonably draw the inference that an individual has been exposed, either directly or indirectly, to the infectious agent that causes a quarantinable communicable disease, as through contact with an infected person or an infected person's bodily fluids, a contaminated environment, or through an intermediate host or vector, and that as a consequence of the exposure, the individual is or may be harboring in the body the infectious agent of that quarantinable communicable disease. HHS/CDC believes that this standard is consistent with the legal requirements of the statute, public health practice, and long-standing historical practice concerning the quarantine and isolation of individuals.

The determination as to whether an individual is "reasonably believed to be infected," as defined in this NPRM, with a quarantinable communicable disease in a qualifying stage is made on a case-by-case basis. Notwithstanding, the following illustrative examples are provided to help explain to the public when facts or circumstances may exist giving rise to a reasonable belief that an individual is infected with a quarantinable communicable disease in its qualifying stage. These include: Clinical manifestations in the individual consistent with those of a quarantinable communicable disease; suspected contact with cases or suspect cases of individuals infected with a quarantinable communicable disease in its communicable stage; host susceptibility to a quarantinable communicable disease combined with opportunity for exposure; travel to countries and places where transmission of a quarantinable communicable disease has likely occurred; reports of the individual exhibiting illness or symptoms consistent with those of a quarantinable communicable disease; or other evidence of possible infection, including exposure to the infectious agent that causes a quarantinable communicable disease. These factors are meant to be illustrative and provide only general guidance. HHS/CDC specifically solicits public comment regarding this definition, in particular, whether the definition aligns with established public health practice regarding the handling of individuals exposed to or infected with communicable diseases.

2. § 70.5 Requirements Relating to Travelers Under a Federal Order of Isolation, Quarantine, or Conditional Release

This provision of the NPRM proposes to replace the previous *§ 70.5 Certain Communicable Diseases; special requirements* that imposes an interstate travel permit requirement for persons in the communicable stage of cholera, plague, smallpox, typhus, or yellow fever. The existing provision also prohibits conveyance operators from "knowingly" accepting for transportation any individual in the communicable stage of any of the specified diseases or in violation of the terms of the travel permit.

Under this NPRM, any individual under a Federal order, or agreement, of isolation, quarantine, or conditional release for a quarantinable communicable disease, as specified by Executive Order, may be prohibited from traveling in interstate traffic, unless the individual has received a written travel permit issued by HHS/CDC. The term "interstate traffic" is currently defined in HHS/CDC regulations at 42 CFR 70.1 and includes movement from a point of origin in any state or possession to a point of destination in any other state or possession. This provision also applies to an "agreement" for isolation, quarantine, or conditional release. An individual must retain the travel permit in his/her possession and comply with the conditions for travel set forth in the permit.

If an individual is denied an application for a travel permit, the denial will be issued in writing. The letter of denial will include the reasons for the denial as well as detailed instructions on whom to contact for questions, including name, address, and telephone number, as well as how to submit an appeal. Individuals who wish to contest HHS/CDC's determination will have 10 calendar days after receiving the letter of denial to submit an appeal. The appeal must be submitted in writing to the CDC, stating the reasons for the appeal and showing that there is a genuine and material issue of fact in dispute. Individuals should include also the reference number listed in the notification letter they received. The appeal should be addressed to: Director, Division of Global Migration and Quarantine, ATTN: Travel Restriction and Intervention Activity, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS E–03, Atlanta, GA 30329. Appeals may also be faxed to HHS/CDC at (404) 718–2158 or emailed to *travelrestrictions@cdc.gov.*

HHS/CDC will issue a written response to an appeal, which shall constitute final agency action. The appeal will be reviewed and decided upon by an HHS/CDC senior official who will be senior to the employee who issued the initial letter of denial. This appeal process is also applicable to revocations and suspensions of a travel permit.

Conveyance operators are also prohibited from "knowingly" transporting an individual under a Federal order, or agreement, of isolation, quarantine, or conditional release without a travel permit or someone who is in violation of the terms of a permit. This prohibition only applies in circumstances where the operator would be reasonably considered to know or have knowledge that the individual is under a public health order and requires a travel permit. For instance, if the operator has been informed directly by the CDC, or if DHS, upon the request of CDC, has placed the individual's name on a Federal public health travel restrictions list ("Do Not Board" (DNB) list)—which would only apply to aircraft operators.

The provisions of this section may also be applied to individuals under a state or local order, or an agreement, (if operators are directly notified by authorities that an individual is under a state or local order) for quarantine, isolation, or conditional release, or to those individuals traveling entirely within a state and to intrastate conveyance operators at the request of a state or local health department or in the event of inadequate local control as determined by the CDC Director under 42 CFR 70.2. In the event that this provision is applied intrastate, CDC will work with the relevant state or local health department of jurisdiction to inform intrastate conveyance operators (*e.g.,* bus operators) on a case-by-case basis of the names of individuals subject to this restriction. The application of these provisions to intrastate travel is authorized under section 361(a) of the Public Health Service Act (42 U.S.C. 264(a)) to the extent that such measures are necessary to prevent the interstate spread of communicable diseases. Specifically, because the statute authorizes the promulgation of regulations that are necessary to "prevent" interstate spread of disease, HHS/CDC may regulate certain activities that occur entirely within a State if those activities present a risk of interstate disease spread, as would occur, for instance, in the event of inadequate local control. This approach is consistent with how courts have interpreted the scope of the Federal government's authority under the Commerce Clause to the U.S. Constitution. *See United States* v. *Lopez,* 514 U.S. 549, 558–559 (1995) (noting that the Commerce Clause authorizes the regulation of the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat to interstate commerce may come only from intrastate activities). This provision is also consistent with HHS/CDC's *Interim U.S. Guidance for the Monitoring and Movement of Persons with Potential Ebola* Virus Exposure, published during the 2014–2016 Ebola epidemic (a description of the guidance is available at *http://www.cdc.gov/vhf/ebola/hcp/monitoring-and-movement-of-persons-with-exposure.html*). HHS/CDC specifically requests public comment on this proposed provision.

HHS/CDC recognizes that the right to engage in travel within the United States is a privilege of national citizenship protected by the Privileges and Immunities Clause of the U.S. Constitution, as well as an aspect of liberty protected by the Due Process Clauses of the Fifth and Fourteenth Amendments. *See Jones* v. *Helms,* 452 U.S. 412, 418 (1981). However, this right is not unqualified and travel restrictions based on the threat posed by communicable diseases are valid. *See Zemel* v. *Rusk,* 381 U.S. 1, 15–16 (1965) ("The right to travel within the United States is of course also constitutionally protected . . . [b]ut that freedom does not mean that areas ravaged by flood, fire or pestilence cannot be quarantined when it can be demonstrated that unlimited travel to the area would directly and materially interfere with the safety and welfare of the area or the Nation as a whole."). Furthermore, HHS/CDC will afford individuals subject to these travel restrictions with adequate due process through the previously mentioned written appeals process.

This new regulatory provision also serves as an important complement to the public health "Do Not Board" (DNB) list. In June 2007, HHS/CDC and the Department of Homeland Security (DHS) developed a public health DNB list, enabling domestic and international public health officials to request that individuals with communicable diseases who meet specific criteria, including posing a public health threat to the traveling public, be restricted from boarding commercial aircraft arriving into, departing from, or traveling within the United States. See *Criteria for Requesting Federal Travel Restrictions for Public Health Purposes, Including for Viral Hemorrhagic Fevers.* Available at: *https://www.Federalregister.gov/articles/2015/03/27/2015-07118/criteria-for-requesting-Federal-travel-restrictions-for-public-health-purposes-including-for-viral.*

The public health DNB list, which is administered by DHS with HHS/CDC's assistance, is primarily intended to supplement state and local public health measures to prevent individuals who are infectious or at risk of becoming infectious from boarding commercial aircraft. However, because use of the DNB list is limited to commercial aircrafts, the public health protections offered by the DNB list do not extend to vessels, or other forms of interstate transportation, such as trains and buses. Thus, this new provision allows for an enhanced HHS/CDC public health response to quarantinable communicable diseases by establishing a permitting process that restricts interstate travel to modes of conveyance that do not put the public at risk of exposure, and ensures that appropriate public health measures are in place. CDC specifically requests public comment on this provision. In particular, HHS/CDC requests comment on whether stakeholders have concerns regarding the requirement imposed on conveyance operators to not "knowingly" transport individuals under a Federal order and the feasibility of this requirement. HHS/CDC also requests public comment on the application of this provision to individuals under state/local order as well as individuals traveling entirely within a state.

3. § 70.6 Apprehension and Detention of Persons With Quarantinable Communicable Diseases

Through this NPRM, HHS/CDC has proposed to change the text of this provision.

We have modified "infected with a quarantinable communicable disease" to clarify, consistent with the statute's requirements, that the individual must be in the "qualifying stage" of a quarantinable communicable disease, which we also define. We did this to better align our regulations with the Public Health Service Act which authorizes the "apprehension and examination of any individual reasonably believed to be infected with a [quarantinable communicable] disease in its qualifying stage and (A) moving or about to move from a state to another state; or (B) to be a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a state to another state." *See* 42 U.S.C. 264(d)(1)(2). The statute's requirement for interstate movement is reflected in the requirement in § 70.6 that HHS/CDC's custody of the individual be "for the purposes of preventing the interstate introduction, transmission, or spread of quarantinable communicable diseases."

4. § 70.10 Public Health Prevention Measures To Detect Communicable Disease

This provision is authorized by the Public Health Service Act. Section 361(a) of the PHS Act (42 U.S.C. 264(a)) authorizes the HHS Secretary to promulgate regulations to prevent the interstate introduction, transmission, and spread of communicable diseases. As previously mentioned, section 361(a) (42 U.S.C. 264(a)) applies broadly to communicable diseases generally and is not limited to those subset of communicable diseases referred to as "quarantinable communicable diseases" for which quarantine, isolation, or conditional release are authorized. Section 361(a) includes the authority to allow for a variety of public health measures in regard to communicable diseases including: Inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be sources of dangerous infection to human beings, and other measures to protect public health. Specifically, this list of public health actions does not involve taking persons into custody or require reasonable suspicion as a predicate to implementation. In contrast an "apprehension, detention, or conditional release" as used in section 361(b) involves custodial situations and requires, with regard to persons moving between states or U.S. territories, a reasonable belief that the individual is in the qualifying stage of a quarantinable communicable disease.

In addition to being consistent with the requirements of section 361 of the Public Health Service Act, this provision is also consistent with constitutional principles and requirements. For instance, in the analogous situation of an airport security screening, it is well established that the Transportation Security Administration may conduct routine warrantless searches of *all* carry-on luggage without individualized suspicion because of the compelling government interest involved. *See United States* v. *Doe,* 61. F.3d 107, 110 (1st Cir. 1995) ("Routine security searches at airport checkpoints pass constitutional muster because the compelling public interest in curbing air piracy generally outweighs their limited intrusiveness."); *see also Russkai* v. *Pistole,* 775 F.3d 61, 68 (1st Cir. 2014) (noting that transit security screenings are treated as "administrative" or "special needs" searches, which may be conducted, at least initially, without individualized suspicion, a warrant, or probable cause). HHS/CDC believes that the rationale for airport security screenings may be extended to other forms of transportation, *e.g.,* trains and buses, because of the similar "administrative" or special governmental need in preventing interstate communicable disease spread. Public health risk assessments are limited to non-invasive means, as defined in this NPRM, which includes temperature assessments using an ear, oral, cutaneous, or noncontact thermometer, auscultation, external palpation, external measurement of blood pressure, as well as questioning of individuals and review of travel documents. HHS/CDC does not intend through this provision to engage in medical testing of individuals (as would typically occur in a hospital or other clinical setting) at ports of entry or other places where individuals may engage in travel or to collect human biological samples for subsequent laboratory testing.

HHS/CDC's intent under this provision is to provide for mandatory public health risk assessment and management at ports or other locations where individuals may gather to engage in interstate traffic. However, as in other circumstances where individuals are screened, such as airport security screenings, an individual's willingness to be screened may be inferred from his or her queueing with other travelers who may be engaging in interstate travel. *See United States* v. *Herzbrun,* 723 F.2d 773, 775 (11th Cir. 1984) (holding that a passenger consents to an airport security search by presenting himself/herself for boarding and that such consent may not be revoked by simply walking away). Thus, in order to protect interstate travel from communicable disease threats, HHS/CDC intends for this section to apply broadly to all circumstances where individuals may queue with other travelers because certain communicable diseases may be spread from person to person under such circumstances. This includes circumstances where only a certain percentage of travelers may be intending to subsequently engage in interstate travel or, for instance, the individual traveler is intending to engage in foreign travel outside the country as opposed to domestic interstate travel because by queuing in line with others at the airport he or she may expose other travelers intending to engage in interstate travel. HHS/CDC specifically requests public comment on this proposed provision and whether the public has any concerns regarding the mandatory health screening of passengers using non-invasive means as defined in this proposed rule.

During a public health risk assessment, if facts or circumstances are discovered that give rise to a reasonable belief that the individual is infected, as defined under this NPRM, with a quarantinable communicable disease in its qualifying stage, CDC may authorize the quarantine, isolation, or conditional release of the individual. Similarly, an individual's refusal to be screened may result in quarantine, isolation, or conditional release, but only if sufficient facts and circumstances otherwise exist giving rise to a reasonable belief that the individual is infected with a quarantinable communicable disease in its qualifying stage.

Under section 311 of the PHS Act (42 U.S.C. 243), HHS/CDC may accept state and local assistance in the enforcement of Federal quarantine rules and regulations, though these entities are not obligated to provide such assistance. In appropriate cases, Federal law enforcement agencies may also be able to assist in the enforcement of Federal public health orders. Under section 365 of the PHS Act (42 U.S.C. 268) it shall be the duty of "customs officers" and "Coast Guard officers" to aid in the enforcement of Federal quarantine rules and regulations. "Customs officers" includes U.S. Customs and Border Protection (CBP) officers, U.S. Border Patrol agents, U.S. Immigration and Customs Enforcement (ICE) officers, and U.S. Coast Guard Commissioned, Warrant, and Petty Officers pursuant to 14 U.S.C. 143 and 19 U.S.C. 1401(i).

This section also requires individuals undergoing a public health risk assessment to provide basic contact tracing information which would be used to locate and notify individuals of a potential exposure to a communicable disease. This information would include U.S. and foreign addresses, telephone numbers, email addresses, used to locate and notify an individual. This section would also require that individuals undergoing a public health risk assessment provide additional information that would be used to assess an individual's health status and make a determination as to whether the individual may pose a public health risk to others. This would include information concerning the individual's intended destination, health status, and history of travel to places where exposure to communicable disease may have occurred. HHS/CDC specifically requests public comment on this proposed provision to collect additional personal information from screened individuals for the purposes of contact tracing.

On December 13, 2007, HHS/CDC published a notice of a new system of records (SORN) under the Privacy Act of 1974 that is relevant to the activities that would be carried out under a future rule related to collecting, retaining, and disseminating passenger and crew data for public health purposes (72 FR 70867). HHS/CDC accepted public comment on its proposed routine uses of this information at that time. As required under the Privacy Act, in its notice, HHS/CDC described the proposed system of records; the proposed routine uses, disclosures of system data, the benefits and need for this data, agency policies and procedures, restrictions on the use of this information, and, most important, HHS/CDC's safeguards to prevent unauthorized use. Data collected from travelers, ill persons, and individuals under Federal public health orders will be maintained in accordance with the Privacy Act and the system of records notice regardless of whether the individual is a U.S. citizen or foreign national. More information regarding the storage, maintenance, and routine uses of this information may be found at 72 FR 70867 (Dec. 13, 2007). HHS/CDC will make disclosures from the system of records only with the consent of the subject individual or in accordance with the Privacy Act or its Privacy Act system of records notice. As a matter of practice, HHS/CDC applies these same requirements and protections afforded by its Privacy Act system of records notice to non-U.S. persons whose personal information is collected and maintained in this system of records.

5. § 70.11 Report of Death or Illness Onboard Aircraft Operated by Airline

This NPRM specifies that the pilot in command of an aircraft operating on behalf of an airline who conducts a commercial passenger flight in interstate traffic under a regular schedule, shall report as soon as practicable to the HHS/CDC the occurrence onboard of any deaths or ill persons among passengers or crew and take such measures as HHS/CDC may direct to prevent the potential spread of the communicable disease, provided that such measures do not affect the aircraft's airworthiness or safety of flight operations. While this provision specific to interstate travel is new to the regulation, the reporting of deaths or illnesses among passengers and crew has been a long-established practice for flights arriving into the United States. Between 2010 and 2015, per year on average, HHS/CDC received about 175 illness and 10 death reports on aircraft and about 220 illness reports and 115 death reports from vessels. In light of recent events, such as the outbreaks of Ebola, measles and MERS, and the possibility that symptomatic, infectious individuals may board interstate flights, HHS/CDC believes it important to introduce this section to ensure that domestic flights report directly to HHS/CDC.

This proposed section of the rule applies to aircraft and does not apply to other forms of transportation, such as buses and trains, because air travel generally carries an especially high risk of rapid transmission and dispersal of communicable disease as air travelers are able to easily connect to other flights and move around the country in just a few hours. Furthermore, if a traveler developed symptoms of a serious communicable disease onboard a bus or train, it might be easier for the bus or train operator to segregate or remove the ill person than onboard an aircraft. CDC also believes that it is easier for a local public health authority to respond to reports of an ill person onboard a bus or train traveling through its jurisdiction, even if ultimately on an interstate journey, than it would be for the same authority to respond to reports of an ill person on an aircraft. Furthermore, if the requirement were extended to interstate buses and trains, HHS/CDC believes that implementing this provision would be overly burdensome.

HHS/CDC further notes that it is making no changes to its existing regulatory requirement at 42 CFR 70.4 which states that the master of a vessel or person in charge of any conveyance engaged in interstate traffic on which a case or suspected case of communicable disease develops shall, as soon as practicable, notify the local health authority. Under this NPRM, the pilot in command of an aircraft operating on behalf of an airline who submits the ill person report to HHS/CDC will not be required to also submit a report to the local health authority. HHS/CDC will continue to share public health information with state and local health departments through electronic disease reporting networks such as the Epidemic Information Exchange (Epi-X), HHS/CDC's secure, web-based system. CDC may also notify local authorities via a Health Alert Notice (HAN), and when necessary, via phone calls, email, or other direct communication.

If finalized as proposed, in implementing this provision, an airline should establish a notification system sufficient to ensure that any death or ill person, as defined, that is made known to the pilot in command is reported to CDC either through the quarantine station of jurisdiction for the destination airport or the CDC Emergency Operations Center (EOC), where possible, at least one hour before arrival. The EOC serves an important triage function within HHS/CDC and operates 24-hours a day. CDC's EOC also is capable of quickly contacting the relevant state and local health authority and quarantine station of jurisdiction as well as assembling the necessary subject-matter experts for purposes of conducting a public heath investigation.

This proposed provision is intended to provide airlines with flexibility regarding the exact routing of reports of deaths or ill persons, as defined. Thus, this NPRM explicitly authorizes airlines to develop and adopt a notification system that relays information from the pilot in command to CDC's EOC through a designated official of the airline. This may be accomplished by the pilot-in-command making a report of a death or ill person to the U.S. Department of Transportation (DOT)'s Federal Aviation Administration (FAA) air traffic control (ATC) facility. In such cases, the DOT/FAA will notify the CDC's EOC via DOT/FAA's Domestic Events Network (DEN), of the report. However, ATC channels will not be used by CDC or airlines for any subsequent coordination regarding the public health response that follows the initial report, unless no other reasonable alternative exists. ATC channels are open radio frequencies whose primary purpose is ensuring the safe and efficient movement of aircraft in the National Airspace System, and any personal health information broadcast over them may be overhead by any person with the appropriate equipment.

HHS/CDC believes that an airline is in the best position to develop a notification system, because airlines presumably already have such systems in place for reporting of deaths or illnesses under CDC's existing regulations in 42 CFR parts 70 and 71 and to the relevant authorities for international flights. HHS/CDC, in coordination with DOT/FAA, may issue additional guidance to airlines regarding recommended procedures for the domestic reporting to the CDC's EOC of any death or ill person made known to the pilot in command. HHS/CDC will consider the adoption and implementation by an airline of a notification system as a measure of an airline's compliance with this provision.

6. § 70.12 Medical Examinations

Under section 361(d)(1) of the PHS Act (42 U.S.C. 264(d)(1)), HHS/CDC may promulgate and enforce regulations concerning the apprehension and examination of any individual reasonably believed to be infected with a quarantinable communicable disease in a qualifying stage e. In addition, HHS/CDC must reasonably believe that the individual is moving or about to move between states or constitutes a probable source of infection to others who may be moving between states. Statutory support for medical examinations may be found directly under 42 U.S.C. 264(d)(1) which authorizes regulations allowing the "apprehension and examination" of any individual reasonably believed to be infected with a quarantinable communicable disease in a qualifying stage. Thus, HHS/CDC believes it is important to make this process more transparent and explicit. Accordingly, HHS/CDC is clarifying that the requirement for a medical examination by an authorized health worker may be included as part of a Federal order for quarantine, isolation, or conditional release. We specifically request public comment on this proposed provision and whether there are any concerns regarding the proposed practice to issue Federal orders before a medical examination has taken place.

HHS/CDC will promptly arrange for a medical examination to be conducted in circumstances where such an examination is necessary to confirm the presence or absence of infection with a quarantinable communicable disease. A medical examination will typically occur in a hospital setting and be performed by clinical staff that will have primary responsibility for the patient's medical care and treatment. HHS/CDC will consult with hospital staff regarding the public health management of the case. A medical examination may include the taking of a medical history, a physical examination, and taking of laboratory samples.

The determination as to whether a medical examination may be necessary in any given circumstances is by its nature highly fact dependent. Notwithstanding, the following illustrative examples are provided to help explain to the public when facts or circumstances may exist giving rise to a need for a medical examination. These include the following circumstances: Clinical manifestations in the individual consistent with those of a quarantinable communicable disease; suspected contact with cases or suspect cases of individuals infected with a quarantinable communicable disease in its communicable stage; host susceptibility to a quarantinable communicable disease combined with opportunity for exposure; travel to countries and places where transmission of a quarantinable communicable disease has likely occurred; reports of the individual exhibiting illness or symptoms consistent with those of a quarantinable communicable disease; or other evidence of possible infection, including exposure to the infectious agent that causes a quarantinable communicable disease. These factors are meant to be illustrative and provide only general guidance.

7. § 70.13 Payment for Care and Treatment

Under this proposed section, HHS/CDC may pay for the care and treatment of individuals subject to apprehension, medical examination, quarantine, isolation, and conditional release after the exhaustion of all third party payments. This section implements § 322 of the Public Health Service Act (42 U.S.C. 249) which authorizes HHS/CDC to provide for the care and treatment of individuals detained in accordance with quarantine laws. Payment for care and treatment under this section is in the CDC's sole discretion, subject to the availability of appropriations, and after all third-party payments have been exhausted. This section also authorizes payment for ambulance or other medical transportation services whenever the HHS/CDC considers such services to be a necessary part of an individual's care and treatment. HHS/CDC, in consultation with state and local health departments, may make advance arrangements with medical providers through a memorandum of agreement or other mechanisms regarding payment for the care and treatment of individuals subject to public health actions.

Under this proposed section, HHS/CDC may assume responsibility for payment for the care and treatment of individuals subject to Federal apprehension, medical examination, quarantine, isolation, and conditional release. For individuals requiring hospitalization for other reasons, however, payment will not be made for costs incurred after it is determined that the individual does not have a quarantinable communicable disease because medical services beyond that point are no longer for the benefit of the public's health. We reemphasize that any payment by HHS/CDC under this section will be made only after all third party payments have been exhausted. Through this proposal, HHS/CDC will arrange for appropriate care and treatment of individuals consistent with U.S. constitutional principles. The issuance of a formal written Federal order is also not a prerequisite for the payment of care and treatment under this section.

HHS/CDC also clarifies that it may pay for ambulance services if necessary for an individual's care and treatment. Relocating an individual by use of ambulance services to a dedicated isolation facility can be reasonably considered to fall under "care and treatment." It is HHS/CDC's intent that neither medical providers, nor travelers, be financially penalized for their cooperation with public health authorities. If finalized as proposed, in implementing this section, HHS/CDC intends to coordinate with state and local health departments and medical providers. HHS/CDC specifically requests public comment on this proposed provision and whether there are any concerns regarding the proposal that all third party payments be exhausted prior to the Federal reimbursement of medical care or treatment for individuals placed under a Federal order for quarantine, isolation, or conditional surveillance.

8. § 70.14 Requirements Relating to Issuance of a Federal Order for Quarantine, Isolation, or Conditional Release

Through this rulemaking, HHS/CDC is describing the process for issuance of Federal orders for isolation, quarantine, and conditional release and required content of such public health orders. Individuals under quarantine, isolation, or conditional release, will be served with written orders describing the facts and circumstances supporting the imposition of such public health measures. This section also proposes to permit the issuance of public health orders to a group of individuals. Thus, in particular circumstances, the Federal order may be written to refer generally to a group of individuals, *e.g.* all individuals onboard a particular interstate flight. HHS/CDC expects that when a Federal quarantine order is written in such a manner that all individuals within that group will still receive separate copies of the group order. HHS/CDC also expects that the circumstances giving rise to a group Federal quarantine order will be exceedingly rare and that most Federal quarantine orders will be written so that they contain the names of those individuals subject to the Federal order and be issued on an individual basis. HHS/CDC specifically requests public comment on this proposed provision to issue Federal orders to entire groups rather than individuals.

This proposed provision requires that orders for quarantine, isolation, or conditional release be in writing, signed by the HHS/CDC authorizing official, and contain specific information such as the identity of the individual or group subject to the order; the factual basis for the quarantine, isolation or conditional release; and the rights and obligations of individuals subject to the order. This proposed provision also requires personal service of the order, or when such service is impracticable, that the notice be posted or published in a conspicuous location. Thus, for instance, if all individuals are to be confined in a common location, the Federal order of quarantine may be posted in a conspicuous place viewable by all of the inhabitants of that location. HHS/CDC believes that these standards for notice are consistent with due process.

HHS/CDC's current practice is to inform individuals of its public health requirements in a language they can understand, to the extent practicable. HHS/CDC will make reasonable efforts to issue orders for quarantine, isolation, or conditional release in languages understandable to those who are subject to these orders. In circumstances where it is impractical to immediately provide a line-by-line translation of the order, HHS/CDC may take other steps to reasonably apprise individuals of the contents of the order, for example, by arranging for oral translation services or summary translations. HHS/CDC specifically requests public comment on this proposed provision and whether this provision sufficiently informs the public all of the important details concerning circumstances during which HHS/CDC would issue to groups or individuals Federal orders for quarantine, isolation, and conditional release and the duration and conditions of such orders.

9. § 70.15 Mandatory Reassessment of a Federal Order for Qarantine, Isolation, or Conditional Release

This proposed provision requires HHS/CDC to reassess the need to continue the quarantine, isolation, or conditional release of an individual or group no later than 72 hours after the Federal order was first served. A reassessment will only occur once after the first 72 hours and will not continue to reoccur every 72 hours. As part of the mandatory reassessment, HHS/CDC will review all records considered in issuing the quarantine, isolation, or conditional release order, as well as any relevant new information. If HHS/CDC decides to continue the quarantine, isolation, or conditional release or modifies it, it will notify the individual of his/her right to request a medical review. A medical review may be requested by anyone under a Federal public health order, after the mandatory reassessment is complete. As part of the mandatory reassessment and where applicable, HHS/CDC will also consider whether less restrictive alternatives would adequately serve to protect the public health. Thus, for instance, if an individual is confined in a guarded facility, HHS/CDC will consider whether less restrictive alternatives, such as home quarantine, would adequately serve to protect the public health. HHS/CDC's review of less restrictive alternatives may include not just an analysis of the nature of the quarantinable communicable disease, but also an assessment of an individual's willingness, ability, and likelihood of complying with less restrictive alternatives.

The mandatory reassessment is designed to minimize the chance that a quarantine, isolation, or conditional release has been misapplied and will consist primarily of a review of the written record, as well as any relevant new information. HHS/CDC has determined that 72 hours is a point at which to reassess these actions because HHS/CDC considers it the minimum amount of time needed to collect medical samples, transport those samples to laboratories, and obtain preliminary results of diagnostic testing on most quarantinable communicable disease agents. Seventy-two hours also represents an appropriate time period in which to review past actions that were taken to protect public health and to reassess the need for continued actions. HHS/CDC specifically requests public comment on this provision—in particular, whether 72 hours is the necessary amount of time to conduct a reassessment after a Federal order is first issued, or if the reassessment should take place earlier or later.

At the conclusion of the reassessment, HHS/CDC will issue a written Federal order directing that the quarantine, isolation, or conditional release be continued, modified, or rescinded. HHS/CDC may continue these actions in circumstances where it determines that such a Federal order was correctly applied and in circumstances where the existence of a quarantinable communicable disease has either been determined to be present or has not yet been ruled out.

10. § 70.16 Medical Review of a Federal Order for Quarantine, Isolation, or Conditional Release

This proposed provision provides an individual under Federal quarantine, isolation, or conditional release with an opportunity to request a medical review. HHS/CDC believes that the term "medical review" best conveys that the review is intended primarily as a medical fact-finding and is not intended to determine legal rights or duties. Upon the request of an individual under a Federal quarantine, isolation, or conditional release order, and after HHS/CDC's mandatory reassessment of the order, HHS/CDC will, as soon as practicable, arrange for a medical review.

HHS/CDC will endeavor to convene the medical review within three to four business days of a request, but may allow for extensions, for instance, to permit the quarantined or isolated individual to confer with his/her chosen representative (or in the case of indigent individuals the appointed medical representative), review medical records, and arrange for witnesses, or when other facts and circumstances warrant. HHS/CDC believes that a more flexible standard concerning the timeframe for when a medical review must be conducted is reasonable and ensures a higher caliber of review by allowing more time to assemble and review the administrative record, conduct further examinations, and assemble necessary parties.

The medical review is for the purpose of ascertaining whether the HHS/CDC has a reasonable belief that the individual is infected with a quarantinable communicable disease, including having been exposed to the infectious agent that causes a quarantinable communicable disease, and is in the qualifying stage of the quarantinable communicable disease. The medical review is not intended to address concerns of individuals who take issue with the amenities of their confinement, but do not otherwise dispute HHS/CDC's reasonable belief. Individuals who, for instance, object to the quality of food, housing, or entertainment available to them while subject to Federal quarantine or isolation may express such concerns through any available means, such as informally raising their concerns with the treatment facility in which they are being confined, without the need for HHS/CDC to conduct a medical fact-finding, which is the purpose of a medical review. However, as part of the medical review, the medical reviewer will consider and accept into the record evidence as to whether less restrictive alternatives would adequately serve to protect public health. Thus, for instance, if the individual is confined in a guarded facility, the medical reviewer will consider whether home quarantine would adequately serve to protect public health. HHS/CDC specifically requests public comment on this proposed provision—in particular, whether or not the public sees a role for the Federal government to ensure that basic living conditions, amenities, and standards are satisfactory when placing individuals under Federal orders.

The medical review is primarily a medical fact-finding and is also not intended to address issues of law or policy. The types of medical issues HHS/CDC expects would be raised at the medical review are those that pertain to the infectious agent at issue, the individual's susceptibility, and the environment in which the individual may (or may not) have been exposed to the infectious agent. Individuals may also raise basic factual questions tending to refute the Director's reasonable belief that the individual is infected with a quarantinable communicable disease, *e.g.*, mistaken identity; not a passenger onboard an affected conveyance; not in contact with an infected individual. Individuals seeking to challenge the legal basis for their quarantine may do so through whatever legal mechanism may be available. HHS/CDC does not express an opinion regarding what form the legal action should take or what legal remedies may be available to individuals seeking to challenge their public health restrictions.

HHS/CDC will notify individuals under a Federal quarantine, isolation, or conditional release order in writing of the time and place of the medical review. HHS/CDC has defined a "medical reviewer" as a physician, nurse practitioner, or similar medical professional qualified in the diagnosis and treatment of infectious diseases who is appointed by the HHS Secretary or CDC Director to conduct a medical review. The medical reviewer may be an HHS or HHS/CDC employee, but only if the employee differs from the HHS/CDC official who issued the Federal order for quarantine, isolation, or conditional release. HHS/CDC believes that allowing for the use of HHS or HHS/CDC employees to serve as medical reviewers is consistent with standards of due process. For instance, HHS/CDC notes that it is not unusual for hospitals to rely on internal decision-makers during emergency civil commitments. The medical reviewer's role will be to review the medical or other evidence presented, make medical or scientific findings of fact, and issue a recommendation to the CDC Director concerning whether the quarantine, isolation, or conditional release should be continued, rescinded, or modified. The medical reviewer's role is distinct from the role of an appointed medical representative and will not be the same individual.

An individual under Federal quarantine, isolation, or conditional release may choose to be represented by anyone at their own expense during a medical review or to represent themselves. However, if an individual is indigent and cannot afford a representative, HHS/CDC will appoint a medical representative upon request at the government's expense. HHS/CDC specifically requests public comment on this provision—in particular, whether the public believes that there may be non-indigent individuals, as defined in this NPRM, who may have difficulty affording a representative. The individual requesting such representation would be expected to sign a statement under penalty of perjury that he/she is indigent as established in the regulation. HHS/CDC would accept the signed statement as prima facie evidence that the standard for indigence has been satisfied and proceed with appointing a medical representative. HHS/CDC does not expect to independently verify income or assets at the time of the appointment. If the individual knowingly makes a false statement, then the individual could be prosecuted. The statement would include the following language, "In accordance with 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing statement is true and correct."

Because the purpose of the medical review is primarily one of medical fact-finding, it is anticipated that an appointed medical representative will be a physician or similar qualified medical professional, and not an attorney, although a patient may also choose to have an attorney present. The medical representative may be an individual from within HHS or HHS/CDC, but will be someone that is unconnected to the agency's original decision to impose the public health restriction. HHS/CDC will use its best efforts to ensure that the medical reviewer and medical representative possess familiarity with the particular communicable disease at issue and with general principles of communicable disease transmission. The facts and circumstances of each case will dictate the type and level of expertise that may be needed in a representative. HHS/CDC believes that these procedures are consistent with the requirements for due process.

At the conclusion of the review, the medical reviewer will issue a written report to the CDC Director as to whether, in the medical reviewer's professional judgment, the quarantine, isolation, or conditional release should be continued, modified, or rescinded. The written report will also be served on the individual under public health restrictions and his/her representative. The Director will review the written report, as well as any objections that may be submitted by the individual under public health restrictions or his/her representative contesting the medical reviewer's findings and recommendation. Upon the conclusion of the review, the Director will promptly issue an order to continue, modify, or rescind the order.

In the event that the Director, after reviewing the medical reviewer's report, continues or modifies the quarantine, isolation, or conditional release, the Director's written order will include a statement that the individual may request that the CDC rescind the public health restriction, but based only on significant, new or changed facts or medical evidence showing that a genuine issue exists as to whether the individual should remain under quarantine, isolation, or conditional release. The Director's order will not constitute final agency action until it is served on the individual or, alternatively, if individual service would be impracticable, it is posted or published. "Final agency action" means that while HHS/CDC will continue to review the need for the public health restriction to ensure that individuals are not detained longer than necessary, HHS/CDC has issued what it believes to be its final agency decision with respect to the quarantine, isolation, or conditional release.

To help facilitate the review, this section also allows HHS/CDC to issue additional or updated instructions through standard operating procedures governing the conduct of medical reviews. Such instructions, for instance, may govern the format and length of written submissions to the medical reviewer, specific number and order of witnesses, and length of oral presentations.

11. § 70.17 Administrative Records Relating to Quarantine, Isolation, or Conditional Release

This proposed provision describes the administrative record as it pertains to an individual under a Federal quarantine, isolation, or conditional release order. The administrative record is the "paper trail" that documents the agency's decision-making process and explains the basis for the agency's decisions. The administrative record contains the available documents that were considered by CDC in making its public health decision to quarantine, isolate, or conditionally release an individual. The administrative record will typically be compiled as documents are generated or received during the course of the agency's decision-making, but may be compiled after the agency's action, for example, in response to litigation.

HHS/CDC offers the following guidance concerning the administrative record. The following types of records would generally not be considered part of the administrative record: (1) Documents that are not relevant to the agency's decision-making process, *e.g.*, fax cover sheets, emails that do not contain relevant information or information documenting the decision-making process; (2) primary documents that did not exist or were unavailable at the time that the agency made its decision; (3) personal notes, journals, appointment calendars, and other similar documents, maintained solely for personal use and not under the agency's control, possession, or maintenance; and (4) internal "working" drafts of documents.

Once the administrative record has been reviewed and compiled, it will be certified as the agency's official record. The individual certifying the administrative record will be an agency official who can attest that the record is complete, accurate, and was considered by the agency in making its decision. A copy of this record will be served on the individual subject to the Federal order upon the individual's request.

12. § 70.18 Agreements

This proposed provision allows HHS/CDC to enter into an agreement with an individual, upon such terms as HHS/CDC considers to be reasonably necessary, indicating that the individual agrees to any of the public health measures authorized under this part, including quarantine, isolation, conditional release, medical examination, hospitalization, vaccination, and treatment; provided that the individual's agreement shall not be considered as a prerequisite to the exercise of the CDC's authority under this part. In circumstances where an individual is unable to confirm agreement, for instance a minor or an individual with a cognitive disability or other incapacity, CDC may enter into an agreement with a parent or other appropriate guardian authorized to act on the individual's behalf.

HHS/CDC believes that the availability of agreements is an important tool to obtain an individual's compliance with public health measures and as a means of building trust with the individual. An agreement, for instance, may be used in circumstances where an individual agrees to comply with the instructions of public health staff, such as to not engage in travel, limit social contacts, or remain in home quarantine. An agreement will typically include a statement indicating the individual chooses to enter into the agreement on a voluntary basis, without duress or coercion, and with full knowledge of the facts and circumstances of his/her individual case. Individuals who decline to enter into such agreements will not face criminal or other penalties for not entering into such agreements. However, individuals who violate the terms of the agreement or the terms of the Federal order for quarantine, isolation, or conditional release (even if no agreement is in place between the individual and the government), he or she may be subject to criminal penalties as explained in the preamble to section 70.19. These criminal penalties will also be explained in the text of the agreement itself. HHS/CDC specifically solicits public comment on the utility and appropriateness of using agreements as described in this preamble, particularly regarding whether such agreements are confusing to individuals as they shall not be considered a prerequisite to the exercise of the CDC's authority under this part.

13. § 70.19 Penalties

This proposed section describes the criminal penalties for violations of quarantine regulations. As prescribed in section 368 (42 U.S.C. 271) and under 18 U.S.C. 3559 and 3571(c), criminal sanctions exist for violating regulations enacted under sections 361 and 362 (42 U.S.C. 264 and § 265). 18 U.S.C. 3559 defines an offense (not otherwise classified by letter grade) as a "Class A misdemeanor" if the maximum term of imprisonment is "one year or less but more than six months." 18 U.S.C. 3571 provides that individuals found guilty of an offense may be sentenced to a fine. Specifically, an individual may be fined "*not more than the greatest of*"—(1) the amount specified in the law setting forth the offense; or (2) for a misdemeanor resulting in death, not more than $250,000; or (3) for a Class A misdemeanor that does not result in death, not more than $100,000. Similarly, an organization, found guilty of an offense may be fined "*not more than the greatest of*"—(1) the amount specified in the law setting forth the offense; or (2) for a misdemeanor resulting in a death, not more than $500,000; or (3) for a Class A misdemeanor that does not result in death, not more than $200,000. 42 U.S.C. 271 sets forth statutory penalties of up to 1 year in jail and a fine of $1,000. Therefore, it is classified as a Class A misdemeanor under 18 U.S.C. 3559. Because the alternate fines set forth under 18 U.S.C. 3571 are greater than the $1,000 set forth under 42 U.S.C. 271, and because the lower penalties established in 42 U.S.C. 271 do not exempt by specific reference the offense from the applicability of the fines under 18 U.S.C. 3571 (18 U.S.C. 3571(e)), the greater penalties of 18 U.S.C. 3571(b)(5) and (c)(5) apply and will thus be incorporated into 42 CFR part 70.

The intent of this proposed section is to inform individuals and entities of the available criminal penalties that currently exist in statute for violations of quarantine regulations. This section clarifies that of the statutory penalties imposed for violation of quarantine regulations (*i.e.,* 42 U.S.C. 271 and 18 U.S.C. 3571), this rule will codify the higher penalty as established in 18 U.S.C. 3571. Furthermore, the penalties described in this section are criminal in nature referring to criminal violations of Federal quarantine regulations. Thus, these penalties would be pursued through the courts and would not be imposed administratively. HHS/CDC specifically requests public comment on this proposed provision—in particular, whether the penalties as proposed in this rule are clearly defined and the circumstances under which such penalties may be imposed.

B. Updates to Part 71

1. § 71.1 Definitions

Through this NPRM, HHS/CDC is proposing to include new and updated definitions to part 71 to provide clarity and help the public understand the intent behind the updated and new provisions.

Agreement

HHS/CDC proposes to define "agreement" in the same manner as how that term is defined under § 70.1.

Airline

HHS/CDC proposes to define "airline" in a similar manner as how that term is defined under § 70.1.

Apprehension

This provision defines apprehension in the same manner as under part 70.

Conditional Release

This proposed provision defines conditional release in the same manner as "surveillance" under § 71.1 and includes public health supervision through in-person visits by a public health official (or designee) telephone, or through any electronic or internet-based means as determined by HHS/CDC. HHS/CDC is proposing to use the term conditional release and cross-referencing the definition of surveillance so that the language of this rule is consistent with the agency's current terminology and practices. As explained in the preamble to this definition under § 70.1, HHS/CDC is also proposing to expand this definition to permit additional forms of public health monitoring to include electronic monitoring and video chat.

Conditional Release

HHS/CDC proposes to define "conditional release" in same manner as how the term is defined under § 70.1.

Contaminated Environment

HHS/CDC proposes to define "contaminated environment" in the same manner as how that term is defined under § 70.1.

Electronic or Internet-Based Monitoring

HHS/CDC proposes to define "electronic or internet-based monitoring" in the same manner as how that term is defined under § 70.1.

Ill Person

We are proposing to update the definition of "ill person" under part 71 for a few reasons. First, we are correcting the temperature correlation from 100 degrees Fahrenheit to 100.4 Fahrenheit in the current definition so that the conversion accurately equals 38 degrees Celsius. Second, we are more closely aligning the HHS/CDC definition with the ICAO guidelines regarding illness reporting, which will also have the effect of capturing other symptoms of communicable disease of public health concern. The NPRM applies the same plain-language approach as described for the definition of "ill person" in part 70 and the above in-depth explanations and examples of the communicable diseases that such signs and symptoms might indicate also apply to this definition under part 71.

Lastly, the new proposed definition of "ill person" under part 71 includes two separate contexts and locations for the purposes of reporting the ill person: One onboard an aircraft and one onboard a vessel. Both subsections include a provision allowing HHS/CDC to include additional signs and symptoms of illness in case our understanding of the recognizable symptoms of communicable diseases of concern, such as Ebola, change or to respond to communicable diseases with unique signs and symptoms that may emerge as future concerns. Notice of such additional signs and symptoms will be published in the **Federal Register**.

This NPRM does not propose to create any substantive changes from current regulations in gastrointestinal illness (*i.e.,* diarrheal) reporting for vessels, nor does it change any current operations of HHS/CDC's Vessel Sanitation Program (VSP). HHS/CDC believes that any distinction in reporting requirements between vessels and aircrafts is justified by the fact that vessels, in particular cruise vessels, typically contain medical facilities onboard and are places where ill persons can be more easily segregated from other passengers and crew. Further, because individuals are typically onboard vessels for a longer duration than an aircraft, it is possible to track the occurrence in a 24-hour period of a greater than normal (for the person) amount of loose stools, per the existing reporting requirements under 42 CFR 71.21(b).

Indigent

This provision defines indigent in the same manner as under § 70.1. CDC specifically requests public comment on whether the use of this standard definition (150% of the applicable HHS poverty guidelines in the **Federal Register**) is an appropriate threshold to determine whether an individual cannot afford representation and therefore should be appointed a medical representative at the government's expense.

Medical Examination

This provision defines medical examination in the same manner as under § 70.1.

Medical Representative

This provision defines medical representative in the same manner as under § 70.1.

Non-Invasive

While not a new concept for HHS/CDC operations, the proposed definition of *non-invasive* is being added to this regulation to provide the public with reasonable assurance and expectations of what measures may be employed as part of a public health risk assessment or following a report of illness. We define *non-invasive* as "procedures conducted by an authorized health worker or another individual with suitable training and includes the physical examination of the ear, nose, and mouth; temperature assessments using an ear, oral, cutaneous or noncontact thermometer; thermal imaging; auscultation; external palpation; external measurement of blood pressure; and other procedures not involving the puncture or incision of the skin or insertion of an instrument or foreign material into the body or a body cavity." *Non-invasive* has the same meaning in part 71 as under part 70. HHS/CDC specifically requests comment concerning this definition including whether the definition aligns with common perceptions of what constitutes non-invasive procedures that may be conducted outside of a traditional clinical setting (*e.g.,* airports, train stations).

Public Health Prevention Measures

Under section 361 of the PHS Act (42 U.S.C. 264(a)), the HHS Secretary has legal authority to approve measures to prevent the introduction, transmission, and spread of communicable disease into the United States. Furthermore, the U.S. government is generally understood to exercise plenary authority at the border. This section authorizes public health screening, risk assessment and management at ports of entry, including U.S. international airports, seaports, and land border crossings, upon terms similar to those described under part 70.

HHS/CDC believes that the provisions of this section may be applied broadly to all travelers at a U.S. port, including airports and seaports, who intend to travel internationally, regardless of whether the particular traveler is arriving into or departing from the United States. For example, it is widely known that most U.S. travelers departing the United States for purposes of engaging in international travel are doing so on round-trip itineraries and thus intend to return to the United States. Thus, it is possible for some of those travelers who may be in the incubation period of a communicable disease to return to the United States while infectious and infect others once in the United States. Collectively, over 350 million international travelers arrive into the U.S. every year. HHS/CDC's Division of Global Migration and Quarantine (DGMQ) helps to protect our nation's health by working to prevent the introduction and spread of communicable diseases into the U.S. While HHS/CDC has quarantine stations located at or near certain international airports and land border crossings, U.S. Customs and Border Protection (CBP) inspects international travelers arriving at U.S. ports of entry and has over 25,000 officers at all U.S. ports of entry where international travelers arrive. CBP's unique position makes them an important partner in identifying and responding to suspected cases of communicable disease. CBP officers serve as HHS/CDC's "eyes and ears" by visually observing travelers for certain signs of illness and notifying the HHS/CDC Quarantine Station of jurisdiction when ill travelers are detected. CDC staff are consulted to determine whether ill travelers may have a communicable disease of public health concern and whether any additional public health action is needed.

Although new to this proposed regulation, public health risk assessment and management is not a new concept. This NPRM informs the public of HHS/CDC's authority to conduct public health risk assessment of an individual through non-invasive procedures and other means, such as observation, questioning, review of travel documents, records review, and other non-invasive means, to determine the individual's health status and potential public health risk to others. For example, due to the 2014–2016 Ebola epidemic, HHS/CDC and DHS began enhanced entry risk assessment and management (*i.e.* "public health prevention measures") at five U.S. airports (New York's John F. Kennedy International, Washington-Dulles International, Newark Liberty International, Chicago-O'Hare International, and Atlanta Hartsfield Jackson International) to take additional steps to help prevent further spread of Ebola and to ensure that anyone found to have symptoms of Ebola at one of these airports was immediately isolated and received appropriate medical examination and care. Public health entry prevention measures enable evaluation of travelers from countries with widespread transmission of communicable disease, as well as the opportunity to provide travelers with educational materials and potential follow up. HHS/CDC requests public comment on these proposed public health prevention measures.

2. § 71.2 Penalties

This proposed provision updates the explanation of criminal penalties under 42 CFR 71.2, which currently states in existing regulation that "any person violating any provision of these regulations shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both as provided in section 368 of the Public Health Service Act (42 U.S.C. 271)." As explained in the preamble language to the penalties provision under part 70, the intent of this section is to inform individuals and entities of the available alternate criminal penalties that currently exist for violations of quarantine regulations.

This section thus codifies the alternate criminal penalties as established in 18 U.S.C. 3571.

3. 71.4 Requirements Relating to Collection, Storage, and Transmission of Airline Passenger, Crew, and Flight Information for Public Health Purposes

At present, HHS/CDC uses a multi-step process to obtain passenger contact information. HHS/CDC issues a written order under the current authority of 42 CFR 71.32(b) to the airline that requires the airline to provide HHS/CDC with contact information about the index case and passenger contacts. The order requires that the airline provide it with each traveler's first and last name, seat number, two phone numbers and email address. Such orders can be marked "urgent" depending on the seriousness of the communicable disease. However, airlines may not be in possession of the contact information sought by HHS/CDC and may not be able to transmit contact data to HHS/CDC in a timely fashion. HHS/CDC instructs airlines to provide data when available or to inform CDC when data are unavailable.

Under this NPRM, upon confirmation by HHS/CDC of a case or suspected case of a communicable disease on board an aircraft, the operator of any airline operating a flight arriving into the United States must make certain contact information described below available within 24 hours of a request by HHS/CDC, to the extent that such data are available and already maintained by the operator. This proposed requirement is a codification of current practice, wherein CDC directly issues a manifest order to the airline, which applies to certain data elements as described in this NPRM that the airline may already have available and authorizes the airline to transmit the contact information in any format and through any system available and acceptable to both the airline and HHS/CDC. Again, because this is a proposed codification of current practices, we assume airlines will continue to submit data through current mechanisms, although we will accept others that are mutually acceptable. Further, in keeping with current practices, under this proposal, airlines are not required to verify the accuracy of the information collected, and airlines are not required to collect additional information from passengers than already collected and maintained by the carrier. Because airline manifest data are often insufficient to contact potentially exposed travelers reliably, CDC will supplement these data with information from CBP, including APIS and Passenger Name Record (PNR), consistent with current practice.

The purpose of this proposed requirement is to protect the vital health interests of passengers and crew so that individuals who have been exposed to a communicable disease during travel may be contacted, informed, and provided with appropriate public health follow-up. The measure also serves public health purposes generally by helping prevent the introduction, transmission, and spread of communicable disease into the United States. Although trends in infectious disease cannot be foreseen precisely, in recent years HHS/CDC only infrequently has had occasion to order airlines to provide the specified contact information for travelers on a given flight. Under the NPRM, orders would continue to be made on a case-by-case basis only, based exclusively on medically indicated criteria. Consistent with prior practice, such orders typically would be limited to information for certain passengers or crew who were seated within a certain distance of an individual infected or reasonably believed to be infected with a communicable disease, and are generally based on medical examination or reports from state or local health authorities. Such passengers and crew are thus at higher risk of exposure to such a disease and stand to benefit most from timely information, assessment and post exposure prophylaxis (if appropriate).

Additionally, we note also that HHS/CDC is committed to protecting the privacy of the information collected. On December 13, 2007, HHS/CDC published a notice of a new system of records (SORN) under the Privacy Act of 1974 that would be applicable to its conduct of activities under this NPRM (72 FR 70867). HHS/CDC accepted public comment on its proposed routine uses of this information at that time. As required under the Privacy Act, HHS/CDC in its notice described the proposed system of records, the proposed routine uses, disclosures of system data, the benefits and need for the routine uses of these data, our agency's policies and procedures, restrictions on the routine uses of this information, and most importantly, our safeguards to prevent unauthorized use. Data collected from passengers; crew; ill persons; and individuals under Federal public health orders will be used to protect the vital health interests of passengers and crew so that individuals who have been exposed to a communicable disease during travel may be contacted, informed, and provided with appropriate public health follow-up. Such data will be maintained in a manner that is consistent with Article 45(2) of the International Health Regulations and will be released to authorized users only, including, where necessary, State and local government health related agencies directly involved in the contact tracing related to the original purpose of the collection. In addition, HHS/CDC will make disclosures from the system only with the consent of the subject individual, in accordance with its routine uses, or in accordance with an applicable exception under the Privacy Act or system of records notice. HHS/CDC emphasizes that the information will be maintained and used in accordance with the Privacy Act and the above-described system of records. Furthermore, HHS/CDC will apply the protections of the SORN to all travelers regardless of citizenship or nationality. HHS/CDC specifically requests public comment on this proposed provision, and has included the chart below to reflect the data elements that are collected under current practice, which CDC seeks to codify through regulation. CDC also requests comment on the applicability of the December 13, 2007 system of records (SORN) to the activities proposed in this provision (72 FR 70867), and whether the SORN sufficiently addresses the public's concerns related to maintenance and protection of the data elements proposed. HHS/CDC requests public comment from operators of airlines regarding the request for a manifest within 24 hours and whether the provision grants sufficient time for operators to respond to manifests orders. HHS/CDC also requests comment regarding the likelihood that the passenger and crew data elements requested are already collected and maintained by airline operators for transmission to CDC.

4. § 71.5 Requirements Relating to Collection, Storage and Transmission of Vessel Passenger, Crew and Voyage Information for Public Health Purposes

Under this NPRM, upon confirmation or reasonable suspicion by HHS/CDC of a case or suspected case of a communicable disease on board a vessel, the operator of any vessel arriving into the United States must make certain contact information described below available within 24 hours of an order by the HHS/CDC, to the extent that such data are available and already maintained by the operator. This proposal is a codification of current practice and applies to any of the data elements that the vessel operator may already have available and authorizes the vessel operator to transmit the contact information in any format and through any system available and acceptable to both the vessel and HHS/CDC. Again, because this is a codification of current practices, we assume vessel operators will continue to submit data through their current mechanisms, although we will accept others that are mutually agreeable.

The purpose of this proposed requirement is to protect the vital health interests of passengers and crew so that individuals who have been exposed to a communicable disease during travel may be contacted, informed, and provided with appropriate public health follow-up. The measure also serves public health purposes generally by helping prevent the introduction, transmission, and spread of communicable disease into the United States. Although trends in infectious disease cannot be foreseen precisely, in recent years HHS/CDC only infrequently has had occasion to order vessels to provide the specified contact information. Under the NPRM, orders would continue to be made on a case-by-case basis only, based exclusively on medically indicated criteria. Consistent with prior practice, such orders typically would be limited to information for certain passengers or crew who were seated within a certain distance of an individual infected or reasonably believed to be infected with a communicable disease, and are generally based on medical examination or reports from state or local health authorities. Such passengers and crew are thus at higher risk of exposure to such a disease and stand to benefit most from timely information, assessment, and post-exposure prophylaxis (if appropriate).

The NPRM proposes the same data submission approach for vessels with minor changes to reflect the differences between air and sea travel (cabin number as opposed to seat number). The NPRM also explicitly excludes ferries, as defined under 46 U.S.C. 2101 and U.S. Coast Guard (USCG) regulations (46 CFR 2.10–25). The NPRM also excludes collecting passenger information from vessels that are carrying fewer than 13 passengers (excluding crew). HHS/CDC selected 13 passengers, excluding crew, as the dividing point since vessels with 13 or more passengers are primarily passenger vessels (as opposed to cargo vessels with ancillary passenger service) and has successfully used this criterion for many decades. HHS/CDC decided to exclude vessels with fewer than 13 passengers because of their lower expected probability of introducing and transmitting communicable disease in the U.S. HHS/CDC decided to focus public health resources on vessels with the greatest number of passengers and the greatest chance of introduction, transmission and spread of infectious disease into the United States. However, we note that we would collect contact information from these vessels if needed for an investigation. The rationale is analogous to HHS/CDC's decision to require the collection of information of airline passengers only rather than passengers on all aircraft, where again, CDC would collect contact information if needed to protect public health.

Under the U.S. Coast Guard's definition referenced in this NPRM, HHS/CDC is also excluding ferries that travel distances of less than 300 miles. Passengers and crew will spend much less time on these voyages as compared to a typical passenger cruise. Therefore, the opportunities for transmitting diseases are lower.

Also in keeping with current practices, under this proposal, vessel operators are not required to verify the accuracy of the information collected and HHS/CDC takes no position on what consequences the vessel operator can impose if a traveler refuses to provide the information, such as refusing to board the traveler.

Finally, we note also that HHS/CDC is committed to protecting the privacy of the information collected. On December 13, 2007, HHS/CDC published a notice of a new SORN under the Privacy Act of 1974 that would be applicable to its conduct of activities under this NPRM (72 FR 70867). HHS/CDC accepted public comment on its proposed routine uses of this information at that time. As required under the Privacy Act, HHS/CDC in its notice described the proposed system of records, the proposed routine uses, disclosures of system data, the benefits and need for the routine uses of these data, our agency's policies and procedures, restrictions on the routine uses of this information, and most importantly, our safeguards to prevent unauthorized use. Data collected from passengers, crew, ill persons, and individuals under Federal public health orders will be used to protect the vital health interests of passengers and crew so that individuals who have been exposed to a communicable disease during travel may be contacted, informed, and provided with appropriate public health follow-up. Such data will be maintained in a manner that is consistent with Article 45(2) of the International Health Regulations and will be released to authorized users only, including, where necessary, state and local government health related agencies directly involved in the contact tracing related to the original purpose of the collection. In addition, HHS/CDC will make disclosures from the system only with the consent of the subject individual, in accordance with its routine uses, or in accordance with an applicable exception under the Privacy Act or system of records notice. HHS/CDC emphasizes that the information will be maintained and used in accordance with the Privacy Act and the above described system of records. Furthermore, HHS/CDC is committed to treating all passenger information under the SORN in the same manner regardless of citizenship or nationality. HHS/CDC requests public comment concerning the mandatory submission of crew and passenger manifests to HHS/CDC containing personally identifiable contact information for the purposes of conducting contact tracing. HHS/CDC specifically requests public comment on this proposed provision. In particular, HHS/CDC requests comment from the general public regarding whether they have any privacy concerns regarding the collection of the specified data elements proposed in this rule, the protection and maintenance of their personally identifiable information by HHS/CDC, and the disclosure of such identifiable information by the airlines and vessels to CDC during contact tracing. HHS/CDC also requests public comment from vessel operators concerning the feasibility of compliance with this provision, whether such operators anticipate having access to the proposed data elements in this rule, and if they have any concerns regarding the submission of passenger and crew information to HHS/CDC as described in this NPRM.

5. § 71.20 Public Health Prevention Measures To Detect Communicable Disease

Through this NPRM, HHS/CDC has included a proposed provision which explicitly authorizes the Director to conduct public health risk assessments of individuals or groups, at U.S. ports of entry or other locations, through non-invasive procedures as defined in 71.1 to detect the potential presence of communicable diseases. This proposal is authorized under section 361(a) of the PHS act (42 U.S.C. 264(a)) and will be implemented in a manner similar to what was described in part 70. This section also proposes to require individuals undergoing a public health risk assessment to submit information for purposes of contact tracing and assessing whether the individual may pose a communicable disease risk. HHS/CDC requests public comment concerning the proposed public health prevention measures using techniques as described in this section and the proposed scope of application of such measures at any US port of entry (such as at airports, train stations, etc.). HHS/CDC also requests public comment on the proposal to collect passenger contact tracing information during the implementation of such passenger risk assessment and management activities.

6. § 71.29 Administrative Records Relating to Quarantine, Isolation, or Conditional Release

This proposed provision explains the compiling of an administrative record regarding the issuance of Federal orders for quarantine, isolation, or conditional release. HHS/CDC will compile the administrative records in the same manner as described in the preamble language under part 70. The individual placed under a Federal public health order will be served upon request with a copy of his or her own administrative record.

5. § 71.30 Payment for Care and Treatment

This proposed provision explains the process of authorizing payment for the medical care and treatment (including room and board costs) of individuals under Federal orders for quarantine, isolation, and conditional release. HHS/CDC will implement this provision in the same manner as described in the preamble language under part 70. HHS/CDC requests public comment concerning the determination that any CDC authorization of payment for the care and treatment of individuals will be secondary to the obligation of any third-party.

6. § 71.33 Persons: Isolation and Surveillance

HHS/CDC is proposing to revise this provision to clarify that it may include other forms of public health supervision besides in-person visits or telephone reporting by the individual under a conditional release order. Such additional forms of monitoring includes "electronic or internet-based monitoring," such as video chat and voice calls from computers, tablets and mobile devices. The proposed definition of "electronic or internet-based monitoring" is intended to be broad and would apply to any new or existing technologies that would allow for the public health supervision and monitoring of an individual under a conditional release order. For clarity, HHS/CDC is also replacing the reference to the "local health officer" with the "state or local health officer." HHS/CDC requests public comment concerning the extension of public health observation and surveillance to include the use of electronic and internet-based technologies as defined in 71.1 for persons under a Federal conditional release order, including any privacy concerns that might arise.

7. § 71.36 Medical Examinations

This proposed provision explains the process of requiring a medical examination of arriving individuals under Federal quarantine, isolation, and conditional release. If finalized as proposed, HHS/CDC will implement this provision in the same manner as described in the preamble language under part 70. HHS/CDC requests public comment concerning the proposed activities related to medical examinations as described in this section—specifically whether medical examinations may be conducted after a Federal order for quarantine/isolation/conditional release is issued, or if medical examinations should be a prerequisite and basis of such Federal orders.

8. § 71.37 Requirements Relating to Issuance of a Federal Order for Quarantine, Isolation, or Conditional Release

This proposed provision explains the process of issuing Federal orders for quarantine, isolation, and conditional release for individuals arriving into the United States from a foreign country or foreign territory. If finalized as proposed, HHS/CDC will implement this provision in the same manner as described in the preamble language under part 70. HHS/CDC requests public comment concerning whether the information as provided in this section sufficiently informs the public of when HHS/CDC will issue a Federal order for quarantine, isolation, or conditional release, what conditions must be met for an individual to receive a Federal order, and the procedural details with which each Federal order will be implemented (*e.g.,* duration, scope, and enforcement).

9. § 71.38 Mandatory Reassessment of a Federal Order for Quarantine, Isolation, or Conditional Release

This proposed provision explains the mandatory reassessment of Federal orders for quarantine, isolation, and conditional release for individuals arriving into the United States. If finalized as proposed, HHS/CDC will implement this provision in the same manner as described in the preamble language under part 70. HHS/CDC requests public comment concerning whether the 72-hour limit within which a mandatory reassessment must take place represents an appropriate threshold. HHS/CDC also requests public comment on the proposed activities that mandatory reassessment would entail as specified in this section.

10. § 71.39 Medical Review of a Federal Order for Quarantine, Isolation, or Conditional Release

This proposed provision explains the process for a medical review available to arriving individuals under Federal orders of quarantine, isolation, and conditional release. If finalized as proposed, HHS/CDC will implement this provision in the same manner as described in the preamble language under part 70. HHS/CDC requests public comment concerning whether the medical review process as described in this section would adequately provide the necessary means for individuals to appeal within HHS/CDC a Federal order for quarantine, isolation, or conditional release. HHS/CDC also requests comment on the Federal appointment of a medical representative to "indigent" individuals as defined in § 71.1 and whether such a threshold would sufficiently permit individuals who cannot afford a medical representative to receive a Federally appointed medical representative.

11. § 71.40 Agreements

This proposed provision authorizes the use of agreements as explained in the preamble text explaining the use of these agreements under § 70.18. HHS/CDC specifically solicits public comment on the utility and appropriateness of using agreements as described in this preamble given that the individual's consent shall not be considered as a prerequisite to the exercise of the CDC's authority under this part.

12. § 71.63 Suspension of Entry of Animals, Articles, or Things From Designated Foreign Countries and Places Into the United States

This section of the NPRM proposes to implement statutory authority contained in section 362 of the Public Health Service Act (42 U.S.C. 265). This proposed provision would allow the HHS/CDC to suspend the entry of animals, articles, or things into the United States from designated foreign countries (including political subdivisions and regions thereof) or places whenever the Director determines that such an action is necessary to protect public health. If finalized as proposed, the CDC Director will designate the specific animals, articles, or things, as well as the foreign countries or places covered by the temporary prohibition on entry. The CDC Director will also designate the period of time or conditions under which the entry of imports covered by the Director's determination into the United States will be suspended. A temporary suspension on the entry of imports covered by the Director's determination into the United States is an important public health tool to slow the introduction of communicable disease into the United States from affected foreign countries or places.

For example, there is strong evidence to indicate that bats may be the primary host of Ebola, and HHS/CDC may wish to temporarily restrict the import of bats based on this evidence.[19] While bats are considered wildlife reservoirs of numerous zoonotic diseases (infections that can be transmitted from animals to humans), bats have been known to host deadly viral hemorrhagic fever diseases, such as Ebola.[20] The risk of Ebola virus infection in bats, in particular, is not limited to any one region of the world as a recent study found serologic evidence of Ebola virus infection in bats in China.[21] A 2012 study of animals (nonhuman primates, including gorillas, chimpanzees, and guenons; duiker; bats) collected during an Ebola virus disease outbreak in Africa (Democratic Republic of Congo, Gabon, Republic of Congo) determined that nearly 33% of animals found dead had laboratory evidence of Ebola virus infection.[22] Although the mechanisms of transmission of Ebola virus from animal reservoirs to humans are not completely understood, at least one Ebola virus disease outbreak in Africa has been attributed to direct human contact with fruit bats.[23] African fruit bats in particular have been associated with Ebola virus infection.[24]

We note again that the ability to suspend the entry of imported animals, articles, or things is not a new practice. In the past, HHS/CDC has taken actions on an emergency basis to prevent the introduction, transmission, and spread of communicable diseases into the United States arising from affected animals, articles, or products onboard arriving conveyances. These actions have included an embargo of birds and bird products from specified Southeast Asian and other countries based on concerns arising from H5N1 influenza virus (*69 FR 7165* (February 13, 2004)) and an embargo of civets based on concerns arising from Severe Acute Respiratory Syndrome (*69 FR* 3364 (January 23, 2004)). HHS/CDC based these actions on authority contained in existing regulations in 42 CFR 71.32(b). However, unlike § 71.32(b), the new provision in this NRPM will not require that HHS/CDC demonstrate a reason to believe that a prohibited animal, article, or thing, was or will be "onboard" an arriving conveyance. HHS/CDC will exercise this new provision for the purposes of temporarily suspending the introduction of animals, articles, or things from designated foreign countries or places into the United States.

This proposed section applies broadly to any animal, article, or thing that may be brought into the United States and is not limited to items intended for commercial importation or sale. The CDC Director will designate the specific animals (by species or other taxonomic designation), articles or things as well as the foreign countries or places from which and the period of time or conditions under which HHS/CDC will suspend the entry of animals, articles, or things into the United States. For instance, the CDC Director could reinstitute the entry of imports into the United States that the CDC Director has previously prohibited when, in the CDC Director's determination adequate measures to protect public health have been implemented in the affected foreign country or place. Under this proposal, the CDC Director may also condition the entry of imports into the United States on measures to be taken by the importer in foreign countries such as rendering a product noninfectious or, in the case of a live animal, obtaining a health certificate signed by a licensed veterinarian. HHS/CDC may also implement this authority through the issuance of specific import permits. The conditions for the permit and the application process will be published on HHS/CDC's Web site at the time that this authority is invoked. HHS/CDC will determine the conditions of the permit on a case-by-case basis. We note that this proposed provision applies broadly to "animals, articles, or things," and the preamble language discussing restricting imports of bats due to the risk of Ebola is simply being used as an example to highlight how this authority could be exercised. For more information on CDC's animal import processes and procedures, please see *http://www.cdc.gov/importation.*

Prior to issuing a restriction on any animal, article or thing, HHS/CDC will continue to coordinate with other Federal partners with who have regulatory equities, such as USDA/APHIS, DOI/FWS, and FDA, balancing important public health issues with private property rights and effects on the global economy and foreign relations, as well as other important public interests such as the need for service animals by people with disabilities. HHS/CDC realizes there may be costs imposed on travel providers, such as vessel companies, but HHS/CDC also believes this provision is sufficiently important to global health to justify the costs. This proposed provision is meant to allow HHS/CDC to respond to events of public health concern, such as the recent outbreak of Ebola in West Africa. We note again that HHS/CDC does not anticipate a current need to exercise this authority and expects to invoke this provision rarely and based on sound epidemiological information of animal-to-human transmission either in the United States (through importation) or in a country where an outbreak is occurring, laboratory testing of humans or animals, or other evidence that suggests risk of importation of a communicable disease vector to the United States.

In implementing this section, if finalized as proposed, HHS/CDC will work with U.S. Department of Homeland Security, U.S. Customs and Border Protection (CBP) regarding any action to seize, export, or detain inbound cargo, or destruction by HHS/CDC, which CBP will then transmit to the importer and carrier of the cargo through the approved electronic data system used to file advance information or entry information for the importation of that cargo. HHS/CDC will also continue to consult with other Federal agencies that have overlapping authority, such as the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA), the U.S. Food and Drug Administration (FDA), the U.S. Fish and Wildlife Service of the U.S. Department of Interior, and the Department of Transportation, to implement actions that may be taken with respect to prohibited cargo. HHS/CDC will also work with companies to resolve issues particular to their situation. HHS/CDC is mindful that these actions may have economic or other consequences and will only take such actions as may be necessary to protect the public health. HHS/CDC specifically requests public comment on this proposed provision, particularly regarding any concerns regarding coordination of activities with other agencies regulating the same space, as well as any industry concerns regarding whether this provision provides sufficient information detailing under what circumstances a Federal embargo on importation of animals, articles, or things would be implemented.

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[19] *http://www.cdc.gov/vhf/ebola/about.html.*

[2] Smith I and Wange LF. Bats and their virome: An important source of emerging viruses capable of infecting humans Curr Opin Virol. 2013 (Feb;3(2):84–91.

[3] Yang J, Zhang Y, Li J, *et al.* Serological evidence of ebolavirus infection in bats, China. Virol J. 2012 Oct. 13;9:236.

[4] OLson SH, Reed P, Cameron KN, *et al.* Dead or alive: animal sampling during Ebola hemorrhagic fever outbreaks in humans. Emerg Health Threat J. 2012;5.

[23] Leroy EM, Epelboin A, Mondonge V, *et al.* Human Ebola outbreak resulting from direct exposure to fruit bats in Luebo, Democratic Republic of Congo, 2007. Vector Borne Zoonotic Dis. 2009 Dec;9(6):723–8.

[24] Leroy EM, Kumulungui B, Pourrut X, *et al.* Fruit bats as reservoirs of Ebola virus. Nature. 2005 Dec 1;438(7068):575–6.

VII. Alternatives Considered

Under Executive Order 13563 agencies are asked to consider all feasible alternatives to current practice and the rulemaking as drafted. HHS/CDC notes that the main impact of the proposals within this rule is to strengthen our regulations by codifying statutory language to describe HHS/CDC's authority to prevent the introduction, transmission, and spread of communicable diseases. The intent of these proposed updates is to best protect U.S. public health and to inform the regulated community of these updates. One less restrictive alternative would be for HHS/CDC to stop enforcing its regulations and make compliance with current regulations voluntary. Under this scenario, HHS/CDC would not solicit contact data from airlines or provide such data to health departments in order to conduct contact investigations. HHS/CDC would not request illness and death reports on aircraft or vessels, but would still follow-up with airlines and vessel operators upon request. HHS/CDC would not prohibit interstate or international travel for persons known to be infected with quarantinable communicable diseases, or conduct entry risk assessment as was done to mitigate the potential spread of Ebola in the United States. This alternative would put travelers at greater risk of becoming infected with communicable diseases, reduce the ability of public health departments to provide post-exposure prophylaxis or other measure to prevent communicable disease spread from travelers known to have been exposed, and generally increase the risk of communicable disease transmission in the United States. Another alternative, to over-regulate by closing U.S. borders and ports of entry to incoming traffic from countries experiencing widespread transmission of quarantinable communicable diseases to protect public health is also analyzed based on the 2014–16 Ebola outbreak in West Africa. HHS/CDC is neither practicable, nor is it desirable.

Alternatives are proposed to increase or decrease HHS/CDC's required payments for care and treatment for individuals under Federal orders as proposed in 42 CFR 70.13 and 42 CFR 71.30. Alternatives are also proposed in which HHS/CDC does not implement temporary animal import embargos (less restrictive) or does not allow importation of animals under temporary embargos for science, education, and exhibition when accompanied by a special permit.

We believe the proposed regulations described above and set forth below in text offer the best solutions for protecting U.S. public health while allowing for continued travel. HHS/CDC believes that this rulemaking complies with the spirit of the Executive Order 13563; all of these changes provide good alternatives to the current

VII. Required Regulatory Analyses

A. Executive Orders 12866 and 13563

HHS/CDC has examined the impacts of the proposed rule under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993)[25] and Executive Order 13563, Improving Regulation and Regulatory Review, (76 FR 3821, January 21, 2011).[26] Both Executive Orders direct agencies to evaluate any rule prior to promulgation to determine the regulatory impact in terms of costs and benefits to United States populations and businesses. Further, together, the two Executive Orders set the following requirements: Quantify costs and benefits where the new regulation creates a change in current practice; define qualitative costs and benefits; choose approaches that maximize net benefits; support regulations that protect public health and safety; and minimize the adverse impact of regulation. HHS/CDC has analyzed the NPRM as required by these Executive Orders and has determined that it is consistent with the principles set forth in the Executive Orders and the Regulatory Flexibility Act,[27] as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)[28] and that, relative to the status quo, the NPRM will create minimal impact. However, there is notable uncertainty about the appropriate analytic baseline, and relative to some possible baselines, the effects of the rule are non-negligible. For example, if in the absence of the codification provided by this rule, some aspects of future CDC entry screening and risk assessment activities are found to be legally impermissible, then the status quo would not represent a reasonable approximation of the state of the world without the rule. Relative to this example baseline, the rule would lead to activities (*e.g.*, the 2014–16 Ebola risk assessment and management program) that have both substantial costs and substantial benefits.

This regulatory impact section presents the anticipated costs and benefits that are quantified where possible. (Most of these quantified effects are relative to the status quo baseline, so unless otherwise noted, references in subsequent portions of this RIA to the "baseline" indicate the status quo.) Where quantification is not possible (as is largely the case with the non-status quo baseline), a qualitative discussion is provided of the costs and/or benefits that HHS/CDC anticipates from issuing these regulations.

Need for Rule

The 2014–2016 Ebola response highlights the inadequacies and limitations of the current traveler data collection process in which CDC must request traveler manifests from airlines and manually search for contact data in order to know *who* enters the United States, *where* they go, and *how* to contact them.

Airlines are often slow to respond to CDC requests for traveler manifests:

○ 30% arrive more than three days after a request,

○ 15% arrive more than six days late.

In addition, available locating information is usually incomplete: CDC receives only the name and seat number for 61% of travelers, and one or more additional pieces of information for 39% of travelers. This NPRM seeks to clarify HHS/CDC's existing authority to request any available contact data from airlines and vessel operators to improve the timeliness and completeness of future requests.

The other change to the economic baseline that may result from this NPRM was the need to change the definition of an "ill person" to better match HHS/CDC guidance and the guidelines contained in Note 1 to paragraph 8.15 of Annex 9 to the Convention on International Civil Aviation.

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[25] The President. Presidential documents. Executive Order 12866 of September 30, 1993: Regulatory Planning and Review. **Federal Register**. Monday, October 4, 1993;58(190). *http://www.archives.gov/Federal-register/executive-orders/pdf/12866.pdf*. Accessed January 2016.

[26] The President. Presidential documents. Executive Order 13563 of January 18, 2011: Improving Regulation and Regulatory Review. **Federal Register**. Friday, January 21, 2011; 76(14). *http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf*. Accessed January 2016.

[27] U.S. Small Business Administration. Regulatory Flexibility Act. *http://www.sba.gov/advocacy/823*. Accessed January 2016.

[28] Summary of the Unfunded Mandates Reform Act. 2 U.S.C. 1501 *et seq.* (1995). *http://www2.epa.gov/laws-regulations/summary-unfunded-mandates-reform-act*. Accessed January 2016.

In addition, HHS/CDC believes that there is a need to better communicate to the public the actions that it has taken in accordance with its regulatory authority under *42 CFR 70.6 Apprehension and detention of persons with specific diseases, 42 CFR 71.32 Persons, carriers, and things,* and *§ 71.33—Persons: Isolation and surveillance.* HHS/CDC believes it is necessary for the public to better understand actions that may be taken to prevent the importation of communicable diseases and to elucidate the due process of individuals under Federal orders for isolation, quarantine, or conditional release. HHS/CDC also believes it is important to elucidate when CDC may authorize payment for the care and treatment of individuals subject to medical examination, quarantine, isolation and conditional release.

Finally, HHS/CDC believes it is important to elucidate its regulatory authority to suspend entry of animals, articles or things from designated foreign countries and places into the United States when importation increases the risk of the introduction and/or transmission of a communicable disease within the United States.

The specific market failure addressed by these regulations is that the costs associated with the spread of communicable diseases impacts the entire U.S. population, not just the group of persons currently infected with communicable diseases or with business interests in providing interstate or international travel to persons or animals infected with communicable diseases.

The economic impact analysis of this NPRM is subdivided into four sections:

1. An analysis of proposed 42 CFR 70.1, 42 CFR 71.1/71.4/71.5, for which the primary costs may be incurred by aircraft and vessel operators and the primary benefit is improved public health responsiveness to assess and provide post-exposure prophylaxis to travelers exposed to communicable diseases of public health concern.

2. An analysis of a number of provisions that aim to improve transparency of how HHS/CDC uses regulatory authorities to protect public health. These changes are not intended to provide HHS/CDC with new regulatory authorities, but rather to clarify the agency's standard operating procedures and policies, and due process rights for individuals. HHS/CDC believes that such clarity is an important qualitative benefit of the provisions proposed this NPRM, but is not able to monetize this increase in clarity in a robust way. The costs and benefits associated with the 2014–2016 Ebola enhanced risk assessment and management program are used to illustrate the costs and benefits of implementation of some of these authorities, and are especially relevant when analyzing the effects of the rule relative to a non-status quo baseline.

3. An analysis of the proposed revisions to *42 CFR 70.13/71.30: Payment for care and treatment,* which are not expected to lead to a change in HHS/CDC policy under which HHS/CDC may act as the payer of last resort for individuals subject to medical examination, quarantine, isolation, and conditional release under Federal orders. The primary benefit of codification is increased transparency around HHS/CDC policies to assist in paying for treatment or transportation for individuals under Federal orders. The analysis for these provisions is an examination in potential transfer payments between HHS/CDC and healthcare facilities that provide treatment to individuals under Federal orders or to other payers.

4. An analysis of the proposed *42 CFR 71.63: Suspension of entry of animals, articles, or things from designated foreign countries and places into the United States.* In this NPRM, HHS/CDC is elucidating its existing regulatory authority. HHS/CDC cannot predict how often such authority may be used in the future or for what purpose. HHS/CDC previously exercised this authority on June 11, 2003, "when under 42 CFR 71.32(b), HHS/CDC implemented an immediate embargo on the importation of all rodents from Africa (order Rodentia)." [29] A simple economic impact analysis of this embargo is performed to demonstrate the costs and benefits of one example, but HHS/CDC does not anticipate an increase in frequency of such actions based on the provisions included in this NPRM. The primary purpose of the analysis is to demonstrate potential costs and benefits using a realistic example.

Each of the four analyses has a unique set of costs and benefits so four separate analyses are performed as summarized below.

Cost Overview Proposed 42 CFR 70.1, 42 CFR 71.1/71.4/71.5, Using a Status Quo Baseline

The quantified costs and benefits of the Notice of Proposed Rulemaking are estimated for the following stakeholders: Air and maritime conveyance operators, state and local public health departments (Ph.D.s), individuals exposed to communicable diseases during travel and United States Government (USG). The most likely estimates of primary costs are low ($35,785, range $10,959 to $65,644) because the NPRM primarily codifies existing practice or improves alignment between regulatory text and the symptoms reporting guidelines provided by ICAO. The cost estimates are based on an increase in

- the number of illness reports delivered by airlines and vessel operators, relay of air illness reports by the Federal Aviation Authority through air traffic control, processed by HHS/CDC;
- increased costs for airlines and vessel operators to comply with HHS/CDC requests for traveler contact data;
- increased costs for state and local public health departments to follow up with a larger number of travelers exposed to communicable diseases during travel.

Benefits, Using a Status Quo Baseline

The best estimate of quantified benefits of the NPRM is also relatively small $117,376 (range $26,337 to $312,054) and mostly results from increased efficiencies for HHS/CDC and state and local public health departments to conduct contact investigations among travelers on aircraft and vessels exposed to communicable diseases and reduced costs associated with measles and tuberculosis morbidity and mortality in exposed travelers.

Other potential but non-quantified benefits of the NPRM would be associated with future outbreaks of infectious disease cases for which improved compliance by airlines and vessel operators to provide available traveler contact data would reduce onward spread of disease in the destination communities of exposed travelers. In addition, the change to the definition of "ill person" may also increase reporting of communicable diseases of public health concern onboard conveyances. Reduction in onward spread would also lead to the ability of the public health establishment to reduce effects of disease outbreaks, *e.g.,* delay the spread of disease until a vaccine is available or limit the numbers of outbreaks and cases or reduce public anxiety associated with the risk of transmission. There may also be a reduction in the economic costs of many business sectors such as avoidance of costs to the travel and tourism industry[30] [31] when a disease is contained in its early stages.

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[29] **Federal Register** 62353 Vol. 68, No. 213 Tuesday, November 4, 2003. P. 62353–69.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of [$$146,000,000, in 2015 USD] or more." Not only will this NPRM not cost State, local and tribal governments any expenditure, it is probable that these stakeholders who might be engaged in contact tracing may see a reduction in costs if the proposed NPRM is implemented and there is an improvement in airline compliance with HHS/CDC requests to provide traveler data.

The Notice of Proposed Rulemaking

Traveler contact information will only be requested by HHS/CDC after a case of serious communicable disease (index case) is reported in a person who traveled on a commercial airline while contagious. Examples of serious communicable diseases include measles, novel influenzas, and viral hemorrhagic fevers such as Ebola among others. This type of situation necessitates identifying and locating passengers seated near the index case in order to conduct a contact investigation (CI). This NPRM would lead to better health outcomes if public health departments are more quickly and effectively able to contact persons potentially exposed to the index case on an aircraft or vessel. These increased efficiencies should lead to smaller infectious disease outbreaks and fewer public health resources needed to control an outbreak.

There are multiple communicable diseases (*e.g.,* measles, tuberculosis, and Ebola) that may necessitate a contact investigation to prevent spread of disease in the community. HHS/CDC was unable to quantify the benefits of preventing the spread of all diseases as a group because of differences in the characteristics of each disease. The differences with respect to potential spread and impact make it difficult to assess the benefits that may accrue from reduced spread of all diseases. The quantified analysis focuses on the two diseases that generate the greatest number of contacts to follow up: Measles and tuberculosis.

The ongoing persistence of measles in the United States provides a good example of the need for this NPRM. In 2000, measles was declared no longer endemic in the United States due to high vaccination rates. Cases and outbreaks of measles continue to occur, however, as a result of importation from other countries and lack of adherence to the recommendation for measles vaccination (*http://www.cdc.gov/vaccines/hcp/acip-recs/vacc-specific/mmr.html*). The United States is currently discovering the greatest number of measles cases that have been identified since the declaration of measles elimination; 97% of recent cases were associated with importations from other countries. Of 45 direct importations, 40 occurred in U.S. citizens after traveling abroad.[32]

Among air travelers exposed to measles during flights, post-exposure prophylaxis (PEP) with measles-containing vaccine (within 72 hours) or immune globulin (within 6 days) can prevent onset of disease,[33] halting outbreaks before they begin. However, without accurate and timely contact data, it is frequently difficult to intervene within these timelines. A recent analysis showed that 9 cases likely occurred as a result of exposure during 108 flights with 74 case-travelers over 3 years. Although there was no onward transmission from these 9 cases,[34] future cases may lead to larger outbreaks.

Measles outbreaks can have substantial associated costs. One study showed that 16 outbreaks with 107 confirmed measles cases cost an estimated $2.7 million to $5.3 million U.S. dollars for public health departments to contain.[35] This corresponds to an average cost per outbreak of about $250,000 in 2015 USD. In comparison, a total of 125 cases occurring in 8 states and three countries were associated with a single measles outbreak that originated in late December 2014 in amusement theme parks in Orange County, California.[36] Thus, the number of cases in this one outbreak exceeded the total number of outbreak-associated cases identified in 16 outbreaks during 2011. The source of the initial exposure has not been identified so it is not possible to determine where this index case was exposed. However, this example demonstrates the speed with which communicable diseases can be transmitted and the importance of quickly identifying persons that may have been exposed during air or maritime travel. It is possible that the costs of this one outbreak, which spread across 8 states, exceeded the total costs of all 16 outbreaks that occurred in 2011 and were estimated to cost public health departments a total of $2.7 million to $5.4 million dollars.[37]

In the absence of interventions by public health departments, travelers infected with measles during international travel would be as likely as any other individuals to initiate a measles outbreak. In the absence of HHS/CDC efforts to retrieve and transmit contact data, public health departments would not be able contact travelers to provide post-exposure prophylaxis and to self-monitor for potential measles symptoms.

Summary of Quantifiable and Qualitative Results of the Regulatory Impact Analysis

The Summary Table provides estimated total monetary results for stakeholders' costs and benefits of implementing the NPRM. HHS/CDC finds (Summary Table) that the lower bound estimates of quantified costs and benefits are zero because this NPRM is primarily codifying existing guidance and practice. The Summary Table includes estimates associated with changes to the definition of 'ill person' in 42 CFR 70.1/71.1 and the codification of international traveler data collection processes of aircraft and vessel contact investigations under 42 CFR 71.4/71.5. The best estimates of annual costs are

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[30] Rassy D, Smith RD. The economic impact of H1N1 on Mexico's tourist and pork sectors. Health Econ. 2013;22(7):824–34. doi: 10.1002/hec.2862. PubMed PMID: 23744805.

[31] Keogh-Brown MR, Smith RD. The economic impact of SARS: How does the reality match the predictions? Health Policy. 2008;88(1):110–20.

[32] Gastañaduy, P.A., S.B. Redd, A.P. Fiebelkorn, J.S. Rota, P.A. Rota, W.J. Bellini, J.F. Seward and G.S. Wallace (2014). "Measles — United States, January 1–May 23, 2014." MMWR 63(22): 496–499.

[33] Nelson, K., Marienau, K.J., Schembri, C. and Redd, S. (2013). "Measles transmission during air travel, United States." Travel Medicine and Infectious Disease (2013) 11, 81e89 11: 81–89.

[34] Nelson, K., Marienau, K.J., Schembri, C. and Redd, S. (2013). "Measles transmission during air travel, United States." Travel Medicine and Infectious Disease (2013) 11, 81e89 11: 81–89.

[35] Ortega-Sanchez, I.R., M. Vijayaraghavan, A.E. Barskey and G.S. Wallace (2012). "The economic burden of sixteen measles outbreaks on United States public health departments in 2011." Vaccine 32(11).

[36] Jennifer Zipprich, Kathleen Winter, Jill Hacker, Dongxiang Xia, James Watt, Kathleen Harriman. (2015) Measles Outbreak — California, December 2014–February 2015. MMWR/February 20, 2015/ Vol. 64/No. 6: 153–154.

[37] Ortega-Sanchez, I.R., M. Vijayaraghavan, A.E. Barskey and G.S. Wallace (2012). "The economic burden of sixteen measles outbreaks on United States public health departments in 2011." Vaccine 32(11).

$35,785 compared to the best estimate of annual benefits at $117,376. The upper bound annual quantified costs are $65,644 and the upper bound quantified benefits are $312,054. Lower bound quantified costs are $10,959 and benefits are $26,337.

The measles and tuberculosis examples should not be considered a complete estimate of non-quantified benefits associated with this NPRM, because the impact of this NPRM to mitigate many different types of infectious disease outbreaks cannot be quantified. It just provides examples based on the two diseases for which contact investigations are most frequently undertaken. Besides communicable diseases commonly reported in the United States (*e.g.,* measles, tuberculosis), this NPRM may also improve HHS/CDC's ability to respond to diseases that are infrequently diagnosed in the United States (*e.g.,* Ebola, novel influenza, Middle East Respiratory Syndrome). For example, it is possible that HHS/CDC may need to prepare to address both Ebola and another disease such as novel influenza or Middle East Respiratory Syndrome (MERS) occurring in two separate countries or regions during a given year. For example, in 2014, two international travelers on commercial flights from the Middle East arrived in the United States while infected with MERS and two international travelers on commercial flights from West Africa arrived while infected with Ebola. Regardless of the infectious disease scenarios faced by HHS/CDC in a given year, this NPRM will improve HHS/CDC's ability to mitigate infectious diseases in the future. To the extent that the NPRM would lead to improved responsiveness of airlines and vessel operators to HHS/CDC traveler data requests, HHS/CDC may become better able to respond to infectious diseases threats and (1) reduce case-loads during infectious disease outbreaks, (2) reduce public anxiety during disease outbreaks, (3) mitigate economic impacts on businesses as a consequence of reduced public anxiety, and 4) reduce the amount of personnel labor time to conduct large-scale contact investigations in response to a new infectious disease or one with serious public health and medical consequences like Ebola .

SUMMARY TABLE OF MONETIZED AND QUALITATIVE BENEFITS AND COSTS OF NPRM (2015 USD), USING A STATUS QUO BASELINE **)

Category	Most likely estimate	Lower bound estimate	Upper bound estimate	Source citation (RIA, preamble, etc.)
Benefits				
Annual monetized benefits (0% discount rate)	$117,376	$26,337	$312,054	RIA.
Qualitative (unquantified benefits)	To the extent that improved responsiveness of airlines and vessel operators to HHS/CDC traveler data requests results from the implementation of the provisions proposed in this NPRM, HHS/CDC may become better able to respond to infectious diseases threats and (1) reduce case-loads during infectious disease outbreaks, (2) reduce public anxiety during disease outbreaks, (3) mitigate economic impacts on businesses as a consequence of reduced public anxiety, and (4) reduce the amount of personnel labor time to conduct large-scale CIs in response to a new infectious disease or one with serious public health and medical consequences like Ebola.			RIA.
Costs				
Annual monetized costs (0% discount rate)	$35,785	$10,959	$65,644	RIA.
Annual quantified, but unmonetized, costs	None			RIA.
Qualitative (unquantified) costs	None			RIA.

** Costs and benefits relative to a non-status quo baseline would be of much greater magnitude than the estimates shown in this table.

Regulated Entities: Airlines and Vessel Operators

The group of entities that may be affected by this NPRM would include international and interstate aircraft operators, vessel operators, travelers, state or local health departments and the Federal government agencies that interact with these groups. Since this NPRM primarily updates regulatory requirements to better match current practice, the economic impacts are marginal changes to current practice that result from codification of current practices.

The North American Industry Classification System (NAICS) is used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. A summary of the total numbers of each entity is summarized in Table 3.

TABLE 3—SUMMARY OF THE NUMBER FIRMS ENGAGED IN INTERSTATE AND INTERNATIONAL AIR AND MARITIME TRAVEL

NAICS codes	NAICS description	Number of firms in industry
481111	Scheduled Passenger Air Transportation	264
481112	Scheduled Freight Air Transportation	212
481219	Other Nonscheduled Air Transportation	516
483111	Deep Sea Freight Transportation	191
483112	Deep Sea Passenger Transportation	54
483113	Coastal and Great Lakes Freight Transportation	337
483114	Coastal and Great Lakes Passenger Transportation	110
483211	Inland Water Freight Transportation	318
483212	Inland Water Passenger Transportation	193

Statistics of U.S. Businesses, 2013 U.S. all industries.[38]

2012 North American Industry Classification System (NAICS).[39]

According to a report by the Federal Aviation Administration, in 2012, U.S. civil aviation-related economic activity generated $1.5 trillion and supported 11.8 million jobs with $459.4 billion in earnings.[40] In 2015, the domestic U.S. market for air travel included 696 million passengers and the international market included another 198 million travelers.[41]

In 2011, there were approximately 11 million North American cruise ship passengers spending 71.8 million passenger nights on board vessels. The cruise ship market was highly concentrated with four firms accounting for 98% of the total market.[42] In total, approximately 18 million travelers enter the United States each year via cruise or cargo ships.[43]

The domestic/international air carrier market is an ever-shifting corporate landscape. Both U.S. and foreign airlines engage in ''code-sharing'' arrangements, whereby the marketing carrier places its call sign (or code) on the operating carrier's flight. For purposes of this rule, reporting duty would require the operating carrier to report on *all* passengers and crewmembers, whether traveling on the operator's code or another carrier's.

The complexity of the domestic/foreign airline-corporations' legal and financial arrangements makes it very difficult to ascertain exactly how each and every domestic and foreign airline would be affected by the implementation costs associated with this NPRM; presumably, some of the costs might be passed along to the carrier putting its code on the operating carrier, pursuant to the particular terms of each applicable contract.

Under this NPRM, the operator of any airline operating a flight arriving into the United States must make certain contact information described below available within 24 hours of a request by HHS/CDC, to the extent that such data are available to the operator. This requirement also applies to the operator of any vessel carrying 13 or more passengers (excluding crew) and, which is not a ferry as defined in under 46 U.S.C. 2101 and U.S. Coast Guard (USCG) regulations (46 CFR 2.10–25). This proposed requirement is a codification of current practice, and applies to any of the data elements that the airline or vessel operator may have available and authorizes the airline or vessel operator to transmit the contact information in any format and through any system available and acceptable to both the airline and HHS/CDC. Again, because this is a proposed codification of current practices, HHS/CDC assumes airlines and vessel operators will continue to submit data through current mechanisms, although HHS/CDC will accept others that are mutually acceptable.

In keeping with current practices, under this proposal, airlines and vessel operators are not required to verify the accuracy of the information collected and HHS/CDC takes no position on what consequences the airlines or vessel operators can impose if a traveler refuses to provide the contact information, such as refusing to board the traveler. To simplify the analysis and to develop conservative cost estimates, HHS/CDC assumed that all costs to airlines and vessel operators would be passed along to U.S.-based airlines, vessel operators, or U.S. consumers.

Diseases Affected by the Rule

HHS/CDC has gathered statistics, or reported information on, a number of notifiable and quarantinable diseases (Table 4) that form the basis for estimates of quantitative and qualitative benefits.

TABLE 4—DISEASES ANALYZED

Measles	Pertussis
Tuberculosis	Rubella.
Rabies	Viral Hemorrhagic Fevers.
Meningococcal disease.	Middle East Respiratory Syndrome Coronovirus (MERS).
Varicella	

These diseases fall into two classes. The first class is the group of diseases that HHS/CDC currently encounters with some frequency (routine diseases): Tuberculosis, measles, meningococcal disease, pertussis and rubella. The second class is a group of new or emerging diseases, or diseases with serious public health and medical consequences, that are not currently prevalent, but are foreseeable as a future threat, *e.g.,* severe acute respiratory syndromes (including SARS and MERS), pandemic influenza, Ebola.

Contact Investigations and Diseases—Interstate and International

The number of travelers exposed to an index case that are subject to a contact investigation (CI) varies by disease and may include only the two passengers sitting adjacent to the index case (meningococcal disease or pertussis) or as much as the entire aircraft (*e.g.,* initial investigations of cases of MERS or Ebola) (Table 5). The entire aircraft or vessel may be subject to CI if the disease is new and transmission patterns are not well understood (*e.g.*, MERS) or if the disease is felt to have serious medical or public health consequences (*e.g.*, Ebola). Some CIs are only initiated for long-duration travel (*e.g.*, tuberculosis for flights of 8 hours or longer). For other diseases (*e.g.*, measles, MERS), CIs are undertaken regardless of duration.

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[38] *http://www.census.gov/econ/susb/.*

[39] *https://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[40] U.S. Department of Transportation, Federal Aviation Administration (January 2015) The Economic Impact of Civil Aviation on the U.S. Economy: Economic Impact of Civil Aviation by State. *http://www.faa.gov/air_traffic/publications/media/2015-economic-impact-report.pdf* (Accessed 5/2/2016).

[41] Bureau of Transportation Statistics T–100 Market data. *http://www.transtats.bts.gov/Data_Elements.aspx?Data=1* (Accessed 5/2/2016).

[42] U.S. Department of Transportation Maritime Administration (March 2012) North American Cruise Statistical Snapshot, 2011 *http://www.marad.dot.gov/wp-content/uploads/pdf/North_American_Cruise_Statistics_Quarterly_Snapshot.pdf* (Accessed 5/2/2016).

[43] According to the U.S. Department of Homeland Security, 54,236 passengers and crew arrive via vessel each day, which correspond to approximately 18 million per year. *https://www.transportation.gov/policy/aviation-policy/us-international-air-passenger-and-freight-statistics-report Accessed on 5/2/2106.*

The table also includes criteria to be considered a contact for persons exposed on vessels. In contrast to air contact investigations, most maritime contact investigations are undertaken before travelers disembark from vessels. Another difference between air and maritime contact investigations is that varicella contact investigations are frequently undertaken among maritime travelers on vessels, but are not pursued for air travelers. In addition, HHS/CDC has not yet had to conduct a contact investigation for Middle East Respiratory Syndrome or viral hemorrhagic fever for travelers exposed on vessels.

TABLE 5—CONTACT INVESTIGATION CRITERIA BY DISEASE, PHD FOLLOW UP

Disease	CI Initiated if	Persons contacted, aircraft	Persons contacted, vessels	Recommended activities
Ebola	All cases	All passengers and crew as of April 2016. In the future, the recommendation may change to include fewer passengers and crew.	Cruise vessel—any passenger or crew who made have come into contact with the index case's body fluids while the index case was symptomatic. Cargo vessel—all on board the vessel while the index case was symptomatic.	Monitoring for 21 days after last potential exposure.
Measles	All cases if notification received within 21 days of flight.	Passengers seated within 2 rows either direction of the index case, all babies-in-arms, crew in same cabin. All passengers and crew on flights with <50 seats.	Direct face-to-face contact or shared confined space >1 hour with symptomatic case-patient.	MMR vaccination if unvaccinated and <72 hrs since exposure; immune globulin if indicated and within 6 days of exposure.
Meningococcal disease.	Case meets the definition of meningococcal disease within 14 days of travel. For air travel: flight >8 hrs (or shorter flights if direct exposure reported).	Passengers or crew sitting directly to the left and right of the index case or with potential for direct contact with oral or respiratory secretions.	Cruise vessels—Cabin mates of or potential for direct contact with oral or respiratory secretions of case-patient during the 7 days prior to symptom onset until 24 hours after implementation of effective antimicrobial therapy. Cargo vessels—All on board the vessel during the 7 days prior to symptom onset of case-patient until 24 hours after implementation of effective antimicrobial therapy.	Post-exposure chemoprophylaxis.
New or re-emerging influenza viruses.	All cases during early stages of international spread.	All passengers and crew	All crew and passengers	Monitoring for 10 days after last potential exposure; possible serologic testing.
Pertussis	All cases if notification is received within 21 days of travel.	Passengers sitting next to index case.	Direct face-to-face contact or shared confined space >1 hour with symptomatic case-patient.	Post-exposure chemoprophylaxis.
Rubella	All cases if notification is received within 60 days of travel.	Passengers seated within 2 rows + crew in same cabin. All passengers and crew on flights with <50 seats.	Direct face-to-face contact or shared confined space >1 hour with symptomatic case-patient.	Serologic testing and guidance for pregnant women.
Severe Acute Respiratory Syndromes.	All cases	SARS-Coronavirus: All passengers and crew. MERS: All passengers and crew contacted during 2014 CIs. Future CIs will include passengers seated within 2 rows of index case.	Cruise vessel—any passenger or crew who had direct face-to-face contact or shared confined space >1 hour with symptomatic case-patient. Cargo vessel—all on board the vessel while the index case was symptomatic.	Monitoring for 10–14 days after last potential exposure; potential serologic testing.
TB	Notification received within 3 months of travel, clinical criteria met. For air travel: Flight >8 hrs	Passengers seated within 2 rows.	Cargo vessel: All crew members within 3 months of diagnosis who worked with case-patient Cruise vessel: Passenger travel companions or crew working in close proximity/sharing living quarters.	Aircraft: Testing for latent TB infection; chest radiograph if the LTBI test is positive Vessels: Clinical assessment for symptoms and chest radiograph.

TABLE 5—CONTACT INVESTIGATION CRITERIA BY DISEASE, PHD FOLLOW UP—Continued

Disease	CI Initiated if	Persons contacted, aircraft	Persons contacted, vessels	Recommended activities
Varicella	All cases on vessels	NA	Any person who has had ≥5 minutes of direct face-to-face contact with a varicella case during the infectious period.	Varicella vaccination if unvaccinated/non-immune and <3 days since exposure (possibly up to 5 days) High-risk contacts evaluated Varicella Zoster immune globulin if <10 days after exposure.

The Quarantine Activity Reporting System (QARS), which contains, among other data, information collected under OMB Control Numbers 0920–0134, 0920–0488, 0920–0821, and 0920–0900, is a web-based and secure electronic system that supports collection of data for ill persons on inbound or interstate flights and vessels and at land border crossings; infectious disease threats, and follow-up actions. Currently, CDC Quarantine Stations at U.S. ports of entry are using the system to record their daily activities. All CIs undertaken by HHS/CDC are documented in QARS.

CIs for international flights from January 2010 through December 2015 are summarized in Table 6. More than half (73.2%) were initiated as a result of tuberculosis cases. Measles is the next most common disease (20.8%). The remaining 6% are subdivided across rubella, pertussis, meningococcal disease and other diseases. This table also includes CIs undertaken for MERS.

TABLE 6—INTERNATIONAL AIR CONTACT INVESTIGATIONS, AVERAGE NUMBER OF ANNUAL INVESTIGATIONS AND CONTACTS BY DISEASE, JAN 2010 THROUGH DEC 2015

[QARS Data] [a]

Disease	Total investigations	Total contacts	Average investigations per year	Average contacts per year	Percent of total contacts
Influenza, avian	0	0	0.0	0.0	0.0
MERS Coronavirus [b]	2	270	0.3	45.0	1.7
Measles	94	3,381	15.7	563.5	20.8
Meningococcal disease	8	9	1.3	1.5	0.1
Other	3	97	0.5	16.2	0.6
Pertussis	11	18	1.8	3.0	0.1
Rabies	3	4	0.5	0.7	0.0
Rubella	17	532	2.8	88.7	3.3
TB (clinically active)	318	11,928	53.0	1988.0	73.2
Viral hemorrhagic fever	7	53	1.2	8.8	0.3
Total	463	16,292	77.2	2,715	

[a] In May 2011, CIs were discontinued for international outbound flights. To give a better picture of what CIs will look like under this new protocol, flights from January 2010 to May 2011 have been excluded from the above-reported counts. In addition, CIs for mumps have been discontinued. Prior to discontinuation, there were approximately 25 contacts per year investigated for mumps.

[b] For these CIs, contact information for the entire flight was required.

In rare instances, a disease is ruled out after a CI has happened.

HHS/CDC also requests traveler contact data to support contact investigations for travelers exposed to infectious diseases on interstate flights. The numbers of investigations and contacts during 2010–15 are summarized in Table 7. In contrast to international flights, very few contact investigations for tuberculosis were undertaken on interstate flights, because most interstate flights do not meet the 8-hour time requirement for tuberculosis contact investigations (Table 5). The majority of contacts were investigated after exposure to measles cases (76%) followed by MERS(8.4%) and viral hemorrhagic fevers including Ebola (8.0%).

TABLE 7—INTERSTATE AIR CONTACT INVESTIGATIONS, AVERAGE NUMBER OF ANNUAL INVESTIGATIONS AND CONTACTS BY DISEASE, JANUARY 2010 THROUGH DECEMBER 2015

[QARS Data]

Disease	Total investigations	Total contacts	Average number of investigations per year	Average number of contacts per year	Percent of total contacts
Measles	72	3,033	12.0	505.5	76.1
Meningococcal disease	1	1	0.2	0.2	0.0
MERS Coronavirus [a]	2	334	0.3	55.7	8.4
Other	0	0	0.0	0.0	0.0
Pertussis	43	83	7.2	13.8	2.1

TABLE 7—INTERSTATE AIR CONTACT INVESTIGATIONS, AVERAGE NUMBER OF ANNUAL INVESTIGATIONS AND CONTACTS BY DISEASE, JANUARY 2010 THROUGH DECEMBER 2015—**Continued**

[QARS Data]

Disease	Total investigations	Total contacts	Average number of investigations per year	Average number of contacts per year	Percent of total contacts
Rabies	3	3	0.5	0.5	0.1
Rubella	8	172	1.3	28.7	4.3
TB (clinically active)	2	40	0.3	6.7	1.0
Viral hemorrhagic fever	4	319	0.7	53.2	8.0
Total	135	3,985	22.5	664.2	....

Note:

[a] For these CIs, contact information for the entire flight was required. In rare instances, a disease is ruled out after a CI has happened.

The numbers of contacts for maritime contact investigations are summarized in Table 8. For maritime investigations, the majority of contacts were investigated for varicella (~79%) followed by tuberculosis (~13%) and measles (~6%). Most of the varicella and measles contact investigations were initiated while travelers were still on vessels. Besides the investigations listed in Table 8, gastrointestinal illness cases on cruise vessels carrying 13 or more passengers are reported to HHS/CDC's Vessel Sanitation Program and cases of Legionnaires' disease are reported directly to CDC's Respiratory Diseases Branch.

TABLE 8—MARITIME PASSENGER DATA COLLECTION, AVERAGE NUMBER OF ANNUAL CONTACTS BY DISEASE

[January 2010–December 2015]

Passengers per voyage	Total investigations	Total contacts	Average number of investigations per year	Average number of contacts per year	Percent of total contacts
Measles	5	288	0.83	48	6.3
Meningococcal disease	3	22	0.5	3.67	0.5
MERS Coronavirus **	0	0	0	0	0.0
Other	1	9	0.17	1.5	0.2
Pertussis	3	14	0.5	2.33	0.3
Rabies	0	0	0	0	0.0
Rubella	2	26	0.33	4.33	0.6
TB (clinically active)	50	585	8.3	97.5	12.8
Viral hemorrhagic fever	0	0	0	0	0.0
Varicella (chickenpox) [a]	206	3,627	34.3	604.5	79.3
Total	270	4,571	45	761.8	100.0

[a] One CI for varicella involved entire crew of the vessel (1224).

Traveler Contact Data Requests From Airlines

For routine contact investigations performed during business hours without HHS/CDC surge staff, HHS/CDC experience suggests that following a flight, it takes airlines up to seven days to respond to a single request for traveler manifest and contact data information currently collected.

Contact tracing is most effective at reducing cases of communicable disease at the early stages of a potential outbreak as soon after initial exposure as possible. Therefore, if an efficient contact system is not in place when the first ill travelers arrive, the benefits of contact tracing are greatly diminished.

Contact data requests only occur after a case of serious communicable disease (index case) is reported in a person who traveled on a commercial airline or vessel while contagious. This type of situation necessitates identifying and locating travelers seated near the index case in order to conduct a CI.

At present, HHS/CDC uses a multi-step process to obtain traveler contact information from airlines. HHS/CDC issues a written order to the airline that requires the airline to provide HHS/CDC with contact information about the index case and traveler contacts. The order cites current regulatory language in 42 CFR 71.32(b), as authorized by 42 U.S.C. 264. HHS/CDC requests that the airline provide it with the traveler's first and last name, seat number, two phone numbers and email address. HHS/CDC instructs airlines and vessel operators to provide data when available or to report when data are unavailable. The time it takes for HHS/CDC to obtain the traveler contact data can range from a few hours to a few days. From 2010 through May 2015, about 70% of manifests from airlines arrived within 3 days of the request, 15% arrived between 3 and 6 days after a request, 15% arrived after more than six days, and nine requests took more than a month or were never received by HHS/CDC.

At present, HHS/CDC requests that airlines and vessels provide available traveler contact data within 24 hours for "urgent" manifest requests. In current practice, requests for contact data are only considered "non-urgent" for contact investigations in which travelers had rubella (for which there is no available prophylaxis) or tuberculosis or for situations in which CDC is not notified of travelers diagnosed with some communicable diseases until after a certain amount of time during which prophylaxis would be effective (*e.g.,* for measles: 6 days). If the analysis is limited to diseases where requests for traveler contact data are marked "urgent" by HHS/CDC (measles, meningococcal disease, MERS, viral hemorrhagic fevers, and rabies), performance improved such that 51% arrived within 24 hours of a request, 33% arrived between 1–3 days after a request, 13% between 3–6 days and only 3% arrived after 6 days.

While HHS/CDC requires that all information be provided upon first order for information, HHS/CDC has consistently seen that the information provided by a majority of airlines appears limited to frequent flyer information, or other limited contact information. Overall, the completeness of data provided by airlines varied such that airlines generally fell into two categories. Some airlines always provided only the passenger name and seat number. Other airlines would provide some additional contact information for passengers. However, even among these airlines, contact data for some of the passengers only included names and seat numbers. Considering all requests from 2014, at least one additional piece of contact information was provided for only about 39% of passengers. If the sample were restricted to only flights for which any contact information was provided (1,270 out of 2,411 total passengers), the fraction of passengers with at least one piece of contact information beyond name and seat number increased from 39% to 73.9%. This contact information would include U.S. address for 41.7% of passengers and one phone number for 45% of passengers. As a result of HHS/CDC's use of available information and technology and its partnerships with other Federal agencies, contact tracing of exposed travelers can now be accomplished more rapidly than would be possible if only the contact data provided by airlines were used.

Since the proposed NPRM does not change the timeframe or amount of data requested from airlines or vessel operators, the most likely economic impact is a small change in the amount of effort for airlines to provide more complete and timely information. To the extent that airlines would become more compliant, it would require some airline information technology staff to expedite requests or to search in more depth for available data. HHS/CDC estimates this may require one hour of staff time per request. HHS/CDC has no way to predict how much more complete, timely, or accurate contact from airlines would become as a result of this NPRM. On average, HHS/CDC acted upon 77 requests per year to airlines for international traveler contact data between 2010 and 2015 (Table 6). In addition, HHS/CDC made 22.5 requests per year for interstate traveler data (Table 7) over the same period. There were 45 contact investigations per year among travelers on vessels (Table 8); however, most of these were undertaken before travelers disembarked vessels in which case contact data could be collected directly from exposed travelers as part of the investigation. The number of maritime contact investigations requiring manifest requests after disembarkation is estimated to be less than 10 per year.

Overall, including international air, interstate air, and maritime activities, the estimated number of contact data requests after disembarkation was rounded up to 125 to account for the fact that HHS/CDC sometimes requests traveler contact data for infectious disease events prior to confirmed diagnoses. On occasion, it turns out that travelers are not infected with diseases that require a public health response. This rounding up should also account for a year in which there is a significant increase in the number of contact investigations among exposed air or maritime travelers.

The average wages for computer and information systems managers (occupation code 11–3021) reported in the Bureau of Labor Statistics, May 2015 Occupational Employment Statistics[44] were $63.27 per hour. On average, under the baseline, HHS/CDC assumes that it would require 6 hours of work by airlines to search databases and provide data. For the NPRM, HHS/CDC assumes that a management-level computer specialist will spend additional time to provide the best possible contact data for potentially exposed travelers. The base salary is multiplied by an overhead multiplier of 100% to account for non-wage benefits and other overhead costs for supporting each employee (Table 9). The lower bound estimate is no change from current practice, while the upper bound estimate assumes 2 hours of time instead of one. HHS/CDC specifically solicits public comment on cost estimates associated with improved provision of travel contact data by affected airlines and vessel operators.

TABLE 9—ESTIMATE OF COSTS FOR AIRLINES AND VESSEL OPERATORS TO IMPROVE COMPLIANCE WITH HHS/CDC REQUESTS FOR TRAVELER CONTACT DATA, 2015 USD

	Average number of manifest requests per year	Increased effort to provide more complete or more timely passenger contact data (hrs)	Average hourly wage rate of IT staff (2015 USD)	Overhead multiplier (percent)	Total cost
Baseline	125	6	$63.27	100	$94,905
Best estimate	125	1	63.27	100	15,818
Lower bound	125	0	63.27	100	0
Upper bound	125	2	63.27	100	31,635

Traveler Contact Data Alternatives

For the less restrictive alternative, HHS/CDC assumes that the process of requesting contact data from airlines and vessel operators would be discontinued. Thus, the cost to provide such data can be modeled as a benefit to airlines and vessel operators equal to their costs under the baseline. For the more restrictive alternative, HHS/CDC assumes that suspension of entry may be implemented for travelers from countries experiencing widespread transmission of quarantinable communicable diseases. Specifically, HHS/CDC assumes that persons traveling from affected countries are not permitted entry to the United States unless such persons spend an amount of time equivalent to the incubation period for the target disease at a location where they are not at risk of exposure and are also screened for symptoms of the disease prior to travel to the United States. During the 2014–2016 Ebola epidemic, travelers from Liberia, Sierra Leone or Guinea would not be able to enter until 21 days in another country or within the affected country but separated from others in a manner that excludes the possibility of interaction with potentially infected individuals.

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[44] *http://www.bls.gov/oes/current/oes_nat.htm.*

On average, HHS/CDC has conducted about 2.5 contact investigations for viral hemorrhagic fevers and MERS coronavirus over the past six years. HHS/CDC assumes that if suspensions of entry may be in place, some fraction of these contact investigations may not be conducted.

Thus, the cost to airlines and vessel operators to provide traveler contact data would decrease for the less restrictive alternative resulting in estimated benefits of $94,905. For the more restrictive scenario, the costs are relatively similar as for the NPRM except for subtracting the cost of providing contact data for 2.5 investigations ($15,501 vs. $15,818) and calculating the benefit of doing 2.5 fewer contact investigations each year ($1,898) (Table 10).

TABLE 10—ESTIMATE OF THE COST TO AIRLINES AND VESSEL OPERATORS TO PROVIDE TRAVELER CONTACT DATA, 2015 USD

	Baseline	NPRM	Less restrictive alternative [a]	More restrictive alternative [b]
Baseline number of contact investigations	125	125	0	122.5
Costs				
Best estimate	NA	$15,818	$0	$15,501
Lower bound	NA	0	0	0
Upper bound	NA	31,635	0	31,002
Benefits				
Best estimate	NA	0	94,905	1,898
Lower bound	NA	0	94,905	1,898
Upper bound	NA	0	94,905	1,898

[a] The less restrictive alternative is less expensive than the status quo, because HHS/CDC does not request data from airlines and attempt to provide data to health departments to follow up with exposed travelers.

[b] The more restrictive alternative also could potentially reduce costs to airlines and vessel operators because HHS/CDC would restrict travel to countries undergoing widespread transmission of quarantinable communicable diseases such as viral hemorrhagic fevers, MERS or SARS

Change to Definition of an "Ill Person"

HHS/CDC is proposing to update the definition of "ill person" in *42 CFR § 70.1* and *71.1* to better facilitate identification of communicable diseases of public health concern aboard flights and voyages. However, HHS/CDC currently requests that aircrafts and vessels report several of the symptoms included in the revised definition of ill person. Besides aircraft and vessel operators, quarantine stations also receive illness reports from U.S. Customs and Border Protection, U.S. Coast Guard, state and local health departments, and health facilities. These reports are not included in this analysis, which focuses on reporting during travel.

HHS/CDC has crafted the proposed definition of "ill person" in such a way that it should be understood by non-medically trained crewmembers and used to discern illnesses of public health interest that HHS/CDC would like to be made aware of according to 42 CFR 70.4 from those that it does not (*e.g.,* common cold), while more closely aligning the definition with the symptoms reporting guidelines published by ICAO in *Note 1 to paragraph 8.15 of Annex 9 to the Convention on International Civil Aviation.* To further assist flight crewmembers (and vessel crewmembers under part 71) in identifying individuals with a reportable illness, HHS/CDC provides the following in-depth explanations and examples of the communicable diseases that such signs and symptoms might indicate. Note that these explanations also apply to the definition of "ill person" under part 71.

1. *Fever:* This term means that the person has a measured temperature of 100.4 °F (38 °C) or greater, feels warm to the touch, or gives a history of feeling feverish. While a measured temperature is the preferable and more accurate method to determine whether a person has a fever, it is not always possible to obtain. The measured temperature also may not reflect the presence of a recent fever, for example, if the individual has taken a fever-reducing medication. For these reasons, the revised "ill person" definition includes other methods that may be used by crewmembers as proxies for a measured temperature. If it is not feasible or advisable to touch the individual or if the individual does not disclose a history of feeling feverish, then, while not definitive, the observer should consider his/her appearance, such as having a flushed face, glassy eyes, or chills as possible indications of the presence of a fever. A self-reported history of feeling feverish is included in the event that the ill person has taken medication that would lower the measured temperature or if the fever fluctuates as part of the natural course of the disease.

2. *Skin rash:* This term means that the individual has areas on the skin with multiple red bumps; red, flat spots; or blister-like bumps filled with fluid or pus that are intact or partly crusted over. The rash may be discrete or may run together, and may include one area of the body, such as the face, or more than one area. The presence of skin rash, along with fever, may indicate that the traveler has measles, rubella (German measles), varicella (chickenpox), meningococcal disease, or smallpox.

3. *Difficulty breathing:* This term means that the individual is gasping for air, is unable to "catch" his/her breath, is breathing too fast and shallow to get enough air, or cannot control his/her own secretions. These symptoms may be apparent or self-reported if not obvious. Difficulty breathing, along with fever, may indicate a traveler has tuberculosis, diphtheria, influenza with pandemic potential, or a severe acute respiratory syndrome.

4. *Persistent cough:* This term means that the cough is frequent and severe enough that it catches the attention of the crewmember, or the individual or another passenger voices concern about it. Persistent cough, along with fever,

may indicate the traveler has pertussis/whooping cough (vomiting may occur at the end of a coughing fit), tuberculosis, severe acute respiratory syndrome, or influenza with pandemic potential.

5. *Decreased consciousness or confusion of recent onset:* This term means that the individual is not fully aware of his/her surroundings or may be unusually difficult to awaken. The individual may appear to be confused or disoriented. Decreased consciousness, along with fever, may indicate the traveler has meningococcal disease, another serious neurological infection, or serious infection in another body system.

6. *Bruising or bleeding (without previous injury):* This term means that the person has noticeable and unusual bruising or bleeding from gums, ears, nose or areas on skin for which there is no obvious explanation. Unexplained bruising or bleeding, along with fever, may indicate the person has a hemorrhagic fever, such as Ebola, or plague.

7. *Persistent diarrhea:* This term means that the diarrhea is frequent and severe enough that the air crewmember notices, for example, that the person has been to the restroom numerous times, or the individual or another passenger voices concern about it. Persistent diarrhea may indicate the person has a food or waterborne infection such as norovirus or cholera, or another serious communicable disease, such as Ebola. Many infections that cause persistent diarrhea can be spread easily from person to person, either directly or indirectly through food or water, and cause large outbreaks.

8. *Persistent vomiting:* This term means that the individual has vomited two or more times (not due to air or sea sickness) and either expresses concern to the air/vessel crew or comes to the attention of others onboard (air/vessel crew or passengers). Persistent vomiting may indicate the person has a food- or waterborne infection such as norovirus, or another serious communicable disease, such as Ebola.

9. *Headache with stiff neck:* This term means that the individual is self-reporting a headache accompanied by difficulty moving his/her neck. These symptoms may indicate that the individual has bacterial meningitis, such as meningococcal meningitis. Meningococcal meningitis has a high death rate and a significant proportion of survivors have residual impairments, such as deafness or injury to the brain. Individuals in close contact with ill persons with meningococcal disease are at elevated risk for contracting the disease.

The current illness reporting requirements for interstate travel are summarized in 42 CFR § 70.4 and state that "The master of any vessel or person in charge of any conveyance engaged in interstate traffic, on which a case or suspected case of a communicable disease develops shall, as soon as practicable, notify the local health authority at the next port of call, station, or stop, and shall take such measures to prevent the spread of the disease as the local health authority directs." Communicable disease is defined in 42 CFR § 70.1 as "illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment."

Thus, the changes proposed in this NPRM would amount to fewer illness reports than may be anticipated under the current regulation. However, in practice, according to CDC guidance available at *http://www.cdc.gov/quarantine/air/reporting-deaths-illness/guidance-reporting-onboard-deaths-illnesses.html*, the symptoms requested for international and interstate illness reporting are the same subset. In addition, according to guidance, reports received by HHS/CDC would be considered sufficient to satisfy the requirement to report to local health departments since HHS/CDC would coordinate any response activities with the local health department after receipt of the illness report.

This NPRM would align the definition from CDC guidance with regulatory text by requiring reports of ill travelers with fever and persistent cough, persistent vomiting, difficulty breathing, headache with stiff neck, decreased consciousness, travelers appearing obviously unwell, or unexplained bleeding. In practice, the codification of such guidance may increase costs to some or all airlines and vessel operators who submit illness reports based only upon symptoms currently identified in 42 CFR 70.1 and not based on CDC guidance. For illness reports from aircraft, FAA may also incur additional costs if the number of illness reports made by aircraft pilots in command to air traffic control and reported to CDC via the Domestic Events Network increases.

For aircraft, the updated definition better aligns with symptoms reporting guidelines published by ICAO in Note 1 to paragraph 8.15 of Annex 9 to the Convention on International Civil Aviation. Therefore, HHS/CDC does not anticipate much additional burden on airlines and vessel operators to report ill travelers during travel.

Although HHS/CDC estimates the net change will be no cost to airline or vessel operators, it may be possible to examine the potential increase using simple assumptions. Table 11 shows the number of reports by pilots in command during flights and recorded in HHS/CDC's Quarantine Activity Reporting System (QARS). These include reports of illness that fit the illness definition specified in current 42 CFR 71.1, reports based on HHS/CDC's guidance for airlines and vessel operators, reports made based on the guidelines in Note 1 to paragraph 8.15 of Annex 9 to the Convention on International Civil Aviation, or illness reports unrelated to current regulation or guidance. Such reports can also be subdivided into reports requiring HHS/CDC response ("response reports") and reports that HHS/CDC receives, but which do not require an HHS/CDC response ("info-only reports"). Info-only reports may include symptoms included in HHS/CDC guidance, but for which the underlying condition can easily be diagnosed not to be a communicable disease of public health concern (*e.g.,* influenza-like illness on an aircraft). Info-only reports can also be based on illnesses not requested by HHS/CDC guidance (*e.g.,* motion sickness). HHS/CDC specifically solicits public comment on cost estimates associated with changes to illness reporting for air and maritime travel and based on the change to the definition of an 'ill person'.

TABLE 11—TOTAL NUMBERS OF REPORTS MADE DURING FLIGHT BY AIRCRAFT OPERATORS, 2011 TO 2015
[HHS/CDC QARS data]

Year/category	Based on symptoms included in current regulation	Based on symptoms included in NPRM	Reports not based on symptoms included in either current regulation or NPRM	Total
2015				
Info-only	30	55	43	128
Response	33	22	15	70
2014				
Info-only	33	61	42	136
Response	19	36	12	67
2013				
Info-only	31	46	29	106
Response	21	25	4	50
2012				
Info-only	34	58	38	130
Response	12	18	2	32
2011				
Info-only	27	39	25	91
Response	25	29	13	67
Average, Info-only	31	51.8	35.4	118.2
Average Response	22	26	9.2	57.2
Average, total	53	77.8	44.6	175.4

In addition to illness reports, HHS/CDC receives an average of 10 death reports during air travel each year. Since death reporting requirements are not changing, these are not analyzed.

Table 11 shows that HHS/CDC already receives a number of reports based on symptoms included in HHS/CDC guidance that will be codified with this NPRM. On average, among the total 175 illness reports per year, about 78 annual reports are based on symptoms included in the NPRM, but not in current regulations compared to 53 reports based on symptoms already listed in current regulations. The remaining 45 reports would include those based on fever alone or based on symptoms not included either in current regulatory text or proposed in this NPRM.

The number of illness reports from master of vessels during voyages is summarized in Table 12. Compared to the breakdown in reports for aircraft, the vast majority of illness reports during voyages are for response as opposed to info-only. There may be greater specificity in reports from cruise vessels because of the presence of medical officers onboard vessels. On average, there were about 208 reports requiring follow-up and 10.6 info-only reports each year. In contrast to reports from aircraft, most of the reporting for vessels pertains to symptoms included in the current regulation (175 per year) as opposed to those proposed for this NPRM (32 per year). Very few reports from vessels (3.4 per year) were based on fever only or based on symptoms not included in either current regulation or proposed in this NPRM.

TABLE 12—TOTAL NUMBERS OF ILLNESS REPORTS (EXCLUDING INFLUENZA-LIKE ILLNESS) MADE DURING VOYAGE BY MASTERS OF VESSELS, 2011 TO 2015
[HHS/CDC QARS Data]

Year/type of report	Year/category	Based on symptoms included in current regulation	Based on symptoms included in NPRM	Reports not based on symptoms included in either current regulation or NPRM
2015:				
Info-only	5	4	4	13
Response	179	21	1	201
2014:				
Info-only	6	3	3	12
Response	168	21	12	201
2013:				
Info-only	1	1	3	5
Response	145	48	11	204
2012:				
Info-only	5	7	3	15
Response	167	19	1	187
2011:				
Info-only	1	3	4	8

TABLE 12—TOTAL NUMBERS OF ILLNESS REPORTS (EXCLUDING INFLUENZA-LIKE ILLNESS) MADE DURING VOYAGE BY MASTERS OF VESSELS, 2011 TO 2015—Continued

[HHS/CDC QARS Data]

Year/type of report	Year/category	Based on symptoms included in current regulation	Based on symptoms included in NPRM	Reports not based on symptoms included in either current regulation or NPRM
Response	196	32	19	247
Average, Info-only	3.6	3.6	3.4	10.6
Average Response	171	28.2	8.8	208
Average, total	174.6	31.8	12.2	218.6

In addition to the illness reports reported in the table, HHS/CDC receives about 115 reports of death during maritime travel each year. In addition, HHS/CDC requests, but does not require reporting of influenza-like-illness from cruise vessels (also not included in above table).

When reports are received, public health officers at Quarantine Stations perform case assessments, may request follow-up information, and may consult with CDC medical officers to determine if additional action such as a contact investigation, onboard response, or notification to state and local health departments is warranted. Under one assumed scenario, the change in the definition of "ill person" included in the NPRM could result in a 25% increase in the number of info-only reports. On average, there are 129 info-only reports for aircraft and vessels each year and a 25% increase would correspond to an annual increase of 30 info-only reports on aircraft and 3 info-only reports on vessels (Table 13). If the average time for each report is estimated to be 2 minutes for aircraft pilots in command or masters of vessels to make the report and 60 minutes for HHS/CDC to document the info-only report, the estimated cost of the additional reports can be estimated based on the opportunity cost of time for each type of personnel. In addition to the time required for aircraft pilots in command and masters of vessels to make reports, the FAA may incur additional costs to relay reports to air traffic control through the Domestic Events Network. The amount of FAA staff time is estimated at 26 minutes for a government employee at GS-level 15, step 6 based in Washington DC In reality, there would be three FAA employees involved including 1 GS–15/16 level employee at air traffic control (10 minutes), 1 GS–15 level employee at the Domestic Events Network (10 minutes), and 1 GS–14 level employee at FAA's Washington Operations Center Complex (6 minutes).[45]

For aircraft pilots in command or masters of vessels (occupation codes 53–2011 and 53–5021), their opportunity cost is estimated from Bureau of Labor Statistics, May 2015 Occupational Employment Statistics[46] based on the average salary of aircraft pilots or copilots ($57.35 per hour) or vessel captain, mate, or pilot ($39.95 per hour). For HHS/CDC employees, the average wage rate is based on the Federal government's general salary scale for a GS–12, step 5 employee based in Atlanta, GA). Base salaries are multiplied by an overhead multiplier of 100% to account for non-wage benefits and other overhead costs for supporting each employee. The annual quantified costs of 35 additional info-only reports would be $4,586.

TABLE 13—CHANGES IN NUMBERS OF INFO-ONLY REPORTS AND ASSOCIATED COSTS FOR THE NPRM, 2015 USD

Employee type	Annual change in number of info-only reports	Amount of time required per report (minutes)	Estimated wage rate per hour, USD	Over-head multi-plier (percent)	Estimated cost, USD
Aircraft:					
Air or maritime conveyance officer	30	2	$57.35	100	$115
CDC employee	30	60	39.83	100	2,390
FAA employees	30	26	70.57	100	1,835
Total Cost, aircraft					4,339
Vessels:					
Air or maritime conveyance officer	3	2	39.95	100	8
CDC employee	3	60	39.83	100	239
Total costs, vessels					247
Total costs, aircraft and vessels					4,586

Besides the possible change in costs of info-only reports, the other potential change would be an increase in the number of reports that require HHS/CDC follow-up. Under the most likely scenario, there will not be a change in these reports since the new definition better corresponds to HHS/CDC guidance and to reporting guidelines published by ICAO in Note 1 to paragraph 8.15 of Annex 9 to the Convention on International Civil Aviation. However, there may be an increase in the number of reports requiring a response. Under this scenario, there may be an increase in costs for air or masters of vessels to report illnesses. The increase in reports requiring response is assumed to be 10% of the average annual reports summarized in Tables 10 and 11: 6 reports per year on aircraft and 21 reports per year on vessels. HHS/CDC assumes that the time required to submit illness reports and for FAA staff to relay reports requiring responses is the same as for info-only reports (2 minutes for pilots in command and masters of vessels and 26 minutes for FAA to relay reports, Table 14).

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[45] Personal communication between Dr. Brian Maskery and DOT/FAA.

[46] *http://www.bls.gov/oes/current/oes_nat.htm.*

There would likely be no change or a decrease in HHS/CDC costs because earlier reporting would lead to a more efficient HHS/CDC response relative to an alternative in which the illness was later reported by a public health department to HHS/CDC. In addition, the public health response to the illness would likely be more efficient because exposed travelers could be contacted earlier. In rare situations, such travelers may potentially be informed of their potential exposure before disembarking an aircraft or vessel or at the gate after disembarking the aircraft or vessel. Such actions should not result in significant delays by holding travelers on board. In such a situation, monetary benefits could greatly exceed monetary costs ($446) associated with the time required to make and relay the report.

TABLE 14—CHANGES IN ANNUAL NUMBERS OF REPORTS REQUIRING RESPONSE AND ASSOCIATED COSTS FOR THE NPRM, 2015 USD

Employee type	Change in annual number of info-only reports	Amount of time required per report (minutes)	Estimated wage rate per hour	Overhead multiplier (percent)	Estimated cost
Aircraft:					
Air or maritime conveyance officer	6	2	$57.35	100	$23
CDC employee	6	0	39.83	100	0
FAA employees	6	26	70.57	100	367
Total Cost					390
Vessels:					
Air or maritime conveyance officer	21	2	39.95	100	56
CDC employee	21	0	39.83	100	0
Total					56

Illness Reporting Alternatives

Illness reporting, contact investigations, quarantine, isolation, and public health measures at ports of entry (*e.g.,* 2014–16 Ebola) are all necessary to improve HHS/CDC's ability to effectively respond to infectious disease threats. Since this NPRM primarily codifies existing practices, HHS/CDC examines two alternatives: A less restrictive alternative in which HHS/CDC relaxes it regulatory authorities to make compliance voluntary rather than compulsory. Under the more restrictive alternative HHS/CDC may enforce the current requirement that airlines report all persons with communicable diseases to local health departments in addition to reporting to HHS/CDC.

The current status quo for illness reporting is summarized in Tables 11 and 12. Reports can be subdivided by illnesses that fit (1) the ill person definition specified in current 42 CFR 71.1, (2) reports based on HHS/CDC's guidance for airlines and vessel operators, or (3) illness reports unrelated to current regulation or guidance. As shown in Table 10, only about 53 out of 175.4 (30%) illness reports during air travel appear to be based on symptoms included in the current definition of an ill person in existing 71.1. The remaining 70% of reports are based on symptoms currently requested by HHS/CDC, but not required. In addition, only 67% of illness reports during air travel require HHS/CDC response and follow-up. In comparison, illness reports from vessels are much more likely to be based on the definition of ill person as defined in current 71.1 (174.6/218.6 or 80%). In addition, a much greater proportion of reports require an HHS/CDC follow-up (>95%). This may result from differences in the types of illnesses observed on vessels relative to aircraft or because of the presence of medical officers on cruise vessels, who may be better able to identify communicable diseases of public health concern during travel relative to aircraft personnel.

If illness reporting were entirely voluntary, HHS/CDC assumes the number of reports (both info-only and reports requiring response) would decrease by 50% from both airlines and vessel operators (Tables 11 and 12). HHS/CDC does not have any data to estimate the magnitude of decrease in reporting and requests public comment from airlines and vessel operators to better quantify this reduction. HHS/CDC believes that both HHS/CDC and FAA would continue to maintain their current infrastructure to effectively respond to public health emergencies either on aircraft or vessels. Thus, relative to the status quo, the primary benefits of voluntary reporting would be reduced incremental time costs for pilots in command and masters of vessels, DOT/FAA, and HHS/CDC, especially for info-only illness reports. This 50% reduction in illness reporting would generate cost savings for airlines and vessel operators, HHS/CDC, and DOT/FAA of approximately $11,300 (Tables 15 and 16).

The primary cost for the less restrictive alternative relative to the baseline would be reduced capacity for HHS/CDC to respond quickly to communicable disease threats occurring during travel. This is analyzed in a subsequent section on the health impact of regulated activities.

TABLE 15—LESS RESTRICTIVE ALTERNATIVE FOR ILLNESS REPORTING

[Effect on info-only reports]

Employee type	Change in number of info-only reports	Amount of time required per report	Estimated wage rate	Overhead multiplier (percent)	Estimated cost or benefit
Aircraft:					
Aircraft Pilots or Copilots	60	2	$57.35	100	$229
CDC employee	60	60	39.83	100	4,780
FAA employees	60	26	70.57	100	3,670
Air total					8,679
Vessels:					
Air or maritime conveyance officer					
Captains, Mates, and Pilots of Water Vessels	6	2	39.95	100	16
CDC employee	6	60	39.83	100	478
Maritime total					494
Total (Air + Maritime)					9,173

TABLE 16—LESS RESTRICTIVE ALTERNATIVE FOR ILLNESS REPORTING

[Effect on reports requiring response]

Employee type	Change in number of reports requiring response	Amount of time required per report	Estimated wage rate	Overhead multiplier (percent)	Estimated cost or benefit
Air:					
Aircraft pilots or copilots	29	2	$57.35	100	$111
CDC employee	29	0	39.83	100	0
FAA employee	29	26	70.57	100	1,774
Total					1,885
Maritime illness reports:					
Captains, mates, and pilots (masters) of vessels	104	2	39.95	100	277
CDC Employee	104	0	39.83	100	
Total					277
Tot (Air + Maritime)					2,162

Under the more restrictive alternative, HHS/CDC would require duplicate illness reporting both to HHS/CDC and to local health departments with jurisdiction upon arrival for interstate flights and voyages. This alternative is based upon the existing regulatory text under 42 CFR 70.4. HHS/CDC assumes that 50% of illness reports occur during interstate (relative to international) air travel and that 15% of maritime illness reports occur during interstate travel. The time required for pilots in command and masters of vessels is assumed to be about 4 minutes. This duration is greater than the amount of time estimate for reporting to HHS/CDC because pilots in command and masters of vessels may have to search for contact information for local health departments and because local health departments may have less experience dealing with illness reports than HHS/CDC. The costs to airlines and vessel operators is estimated to be $848 per year (Table 17). Since HHS/CDC would coordinate responses to illness reports with local health departments under the status quo, there are no additional costs or benefits to requiring duplicative reports to local health departments. These costs would be added to the costs of the changes resulting from the NPRM.

TABLE 17—MORE RESTRICTIVE ALTERNATIVE (ILLNESS REPORTING IN DUPLICATE TO HHS/CDC AND TO LOCAL HEALTH DEPARTMENTS), 2015 USD

Employee type	Change in number of info-only reports	Amount of time required per report	Estimated wage rate	Overhead multiplier	Estimated cost or benefit
Aircraft pilots or copilots	88	4	$57.35	100%	$673
Captains, mates, and pilots (masters) of vessels	33	4	39.83	100%	175
Total					848

The monetized annual costs resulting from the change in the definition of "ill person" are summarized in Table 18.

TABLE 18—BEST ESTIMATE, LOWER BOUND AND UPPER BOUND OF THE CHANGES IN ANNUAL MONETIZED BENEFITS AND COSTS AS A RESULT OF THE CHANGE TO THE REPORTABLE ILLNESS DEFINITION

	Best estimate	Lower bound	Upper bound
Costs			
NPRM:			
Aircraft			$ 4,729
Vessels			303
Total			5,032
Less Restrictive Alternative:[a]			
Aircraft			
Vessels			
Total			
More Restrictive Alternative:			
Aircraft	$ 673	$ 673	5,402
Vessels	175	175	478
Total	848	848	5,880
Benefits			
NPRM:			
Aircraft			
Vessels			
Total			
Less Restrictive Alternative:[a]			
Aircraft	10,563	10,563	10,563
Vessels	771	771	771
Total	11,334	11,334	11,334
More Restrictive Alternative:			
Aircraft			
Vessels			
Total			

[a] For the less restrictive scenario, the current reporting requirement is relaxed leading to a reduction in costs.

The total costs of the proposed NPRM are summarized in Table 19 and include the costs of the change to the definition of an "ill person" and the codification of the requirement for airlines to provide passenger contact data for the NPRM, the less restrictive alternative, and the more restrictive alternative.

TABLE 19—TOTAL COSTS AND BENEFITS RESULTING FROM CODIFICATION OF TRAVELER DATA COLLECTION (71.4 AND 71.5) AND CHANGE TO DEFINITION OF "ILL PERSON" (70.1 AND 71.1)

	Best estimate	Lower bound	Upper bound
Costs			
NPRM:			
71.4 and 71.5 Passenger data collection	$15,818	$0	$31,635
70.1 and 71.1 Change in definition of an "ill person"	0	0	5,032
Total costs	15,818	0	36, 667
Less Restrictive Alternative:			
71.4 and 71.5 Passenger data collection	0	0	0
70.1 and 71.1 Change in definition of an "ill person"	0	0	0
Total costs	0	0	0
More Restrictive Alternative:			
71.4 and 71.5 Passenger data collection	15,501	0	31,002
70.1 and 71.1 Change in definition of an "ill person"	848	848	5,880
Total costs	16,349	848	36,883

TABLE 19—TOTAL COSTS AND BENEFITS RESULTING FROM CODIFICATION OF TRAVELER DATA COLLECTION (71.4 AND 71.5) AND CHANGE TO DEFINITION OF "ILL PERSON" (70.1 AND 71.1)—Continued

	Best estimate	Lower bound	Upper bound
Benefits			
NPRM:			
71.4 and 71.5 Passenger data collection	0	0	0
70.1 and 71.1 Change in definition of an "ill person"	0	0	0
Total benefits	0	0	0
Less Restrictive Alternative:			
71.4 and 71.5 Passenger data collection	94,905	94,905	94,905
70.1 and 71.1 Change in definition of an "ill person"	11,334	11,334	11,334
Total benefits	106,239	106,239	106,239
More Restrictive Alternative:			
71.4 and 71.5 Passenger data collection	1,898	1,898	1,898
70.1 and 71.1 Change in definition of an "ill person".			
Total benefits	1,898	1,898	1,898

Benefits from streamlining the CI process for routinely imported diseases

This section reports the benefits that HHS/CDC anticipates from implementation of the NPRM in avoiding the costs incurred annually for CIs of infectious diseases. The primary steps of CIs for routine diseases are:

- A traveler (the index case) is identified as ill either during the flight or voyage with a reportable illness or after with a notifiable disease. The aircraft pilot in command or master of vessel may report the illness directly to HHS/CDC. Illnesses on aircraft may also be reported indirectly to HHS/CDC via air traffic control and then through the Domestic Event Network. If the report occurs after travel, a healthcare facility would then report the illness either to HHS/CDC or public health departments (Ph.D.s).
- If CI criteria are met, HHS/CDC contacts the airlines for
  - a manifest to determine where the index case was seated in relation to other passengers or crew members,
    - HHS/CDC also asks the airlines for traveler contact information
    - HHS/CDC then requests information available in multiple DHS' databases to verify or obtain passenger contact information not included in the manifest.

Once HHS/CDC has the traveler contact information and flight-seating chart, the CI begins. Current CI procedures are cumbersome, primarily because of the difficulties associated with obtaining traveler contact information. HHS/CDC staff may contact airlines more than once to obtain traveler contact data including email address, one or two phone numbers, and address in the United States for U.S. citizens and permanent residents. Because of missing or incorrect contact data from airlines, HHS/CDC also works with DHS to access contact information for travelers exposed to communicable diseases on international flights.

When passenger contact information is delayed or partial, state/local public health departments are delayed in starting CIs and, depending on the disease, this delay could make it impossible to prevent illness and/or the transmission of disease. Further, PHDs have less success contacting passengers with partial information than they would if airlines' and vessel operators' compliance with requests was improved as a result of this NPRM.

The model for estimating the benefits of CIs is: Current number of CIs × (reduction in HHS/CDC and health department staff time/resources per contact) × value of staff time.

The rest of this section reports both the quantifiable benefits arising from streamlining the CI process and a discussion of health benefits that can be substantial but cannot be directly quantified on an annual basis. The differential impacts of the various diseases make it hard to summarize NPRM effects given uncertainty around future probabilities of case(s) of multiple such notifiable disease(s). Instead, HHS/CDC presents a simple example based on the average PHD costs associated with a measles outbreak in case such an outbreak could be avoided as a result of either improved illness reporting onboard conveyances or as a result of improved compliance with HHS/CDC requests for traveler contact data.

Estimating the number of infected travelers.

Most air travelers with illness are not identified in flight, but rather seek medical care and are identified as an index case after their travel is completed. Since travelers spend more time on vessels during maritime trips, more illnesses are detected during voyages and contact investigations may be implemented on board vessels. When illnesses are detected after travel, the medical practitioner should notify HHS/CDC or a PHD if the diagnosed disease is on either the list of quarantinable communicable diseases or the list of notifiable diseases. If HHS/CDC can draw upon the improved contact information based on the codification of requests for traveler contact data to aircraft and vessel operators as set forth in this NPRM to locate travelers exposed to an index case before he/she becomes ill, the risk of onward disease transmission can be reduced. By contacting ill travelers more quickly, HHS/CDC may slow the spread and the severity of the outbreak. The benefits therefore depend on:

- How many infected travelers are expected to enter the United States;
- How many quarantinable or notifiable diseases are detected either on-board the aircraft/vessel or reported to HHS/CDC by PHDs;
- How many exposed travelers will become ill as a result of exposure during travel;
- How the infection will be transmitted within the U.S. population;
- How effective public health agency contact tracing will be with and without the NPRM.

In addition to improved efficiencies associated with more timely or more complete provision of traveler contact data by airlines and vessel operators, there may also be an increase in the number of reports of ill travelers during travel that require HHS/CDC follow-up.

Under the most likely scenario, there will not be a change in these reports, since the new definition better corresponds to reporting guidelines published by ICAO in Note 1 to paragraph 8.15 of Annex 9 to the Convention on International Civil Aviation and current HHS/CDC guidance. However, as reported in Table 13, there may be an increase of 23 reports requiring a response during flights and voyages. Under this scenario, there would likely be no change or a decrease in HHS/CDC costs because earlier reporting would lead to a more efficient public health response relative to an alternative in which the illness was later identified after presentation to a health care provider and reported by a Ph.D. In addition, the public health response to the illness would likely be more efficient because exposed travelers could be contacted earlier, potentially before disembarking the aircraft or vessel.

Primary benefits: Improved efficiency of contact investigations undertaken by CDC and partners at state and local health departments and reduced risk of infectious disease outbreaks

The primary monetized annual benefit for both the change to the definition of an "ill person" for the purposes of illness reporting and the codification of HHS/CDC requests from airlines and vessel operators for traveler contact data is an improvement in CDC's ability to respond effectively and mitigate infectious disease outbreaks. There are a number of intermediate steps between either an illness report or receiving more complete or timelier traveler data and stopping an infectious disease outbreak. For example, the travelers exposed to the infectious disease would have to comply with public health measures to mitigate either their risk of becoming ill with a specific infectious disease or transmitting that disease to other individuals.

The amount of time HHS/CDC staff spent per air or maritime contact varies with the size of the CI because some tasks are CI-specific, such as filling out reports or obtaining manifests, and some are contact-specific such as determining a specific traveler's contact information. The CI-specific labor time costs less per contact when an investigation includes more contacts, *e.g.*, a manifest that takes 60 minutes of CDC staff time to obtain for 2 contacts is the equivalent of 30 minutes-staff-time-per-contact while the same manifest listing 30 contacts is the equivalent of 2 minutes-staff-time-per-contact. On the other hand, the traveler-specific time tends to increase-per-contact with less information and decrease-per-contact with more information.[47] Further, the QARS system used to document and follow up on CIs requires full-time personnel to maintain the system, pull regular reports, and monitor follow-up of travelers contacted during CIs. Finally, HHS/CDC has two full-time persons regularly assigned as liaisons to DHS whose duties include gathering contact information from DHS systems. Therefore, for HHS/CDC staff time to initiate and follow up on different sized CIs, to track down traveler contact information from multiple sources, to work with PHDs, document and report on CIs, update and train in systems, and manage the staff involved in CIs, a cost of $180 per contact is estimated. This is the equivalent of 2 hours of a HHS/CDC staff person's being paid the salary of a GS–13, step 4 plus 100% for benefits and employee overhead costs (Table 20).

For PHD resources, HHS/CDC also estimated a cost-per-contact of $180, which is consistent with HHS/CDC costs and a recent publication adjusted to 2015 dollars.[48] PHD processes vary greatly from state to state and at the local level within a state. A couple of examples:

- One state assigns 2 registered nurses (RNs) who perform 5 CIs or fewer per year for the entire state another state assigns 3 RNs, a Public Health Service Medical Officer, a physician, and a data analyst and conducts about 25 CIs a year[49]
- When one state receives information about passenger contacts from HHS/CDC, the state epidemiologist creates several documents to fax to the relevant county health departments, a team of an epidemiologist and RNs at the county then either call or visit the contacts if there is an address. But the state epidemiologist will make every effort to locate travelers even if their final destination is unclear.[50]

Finally, different diseases may elicit different levels of response at the PHD level, with a more rapid response for highly infectious diseases like measles that can be prevented with timely post-exposure prophylaxis and a more measured response for less infectious diseases like TB. By using the same cost for HHS/CDC and for PHDs, HHS/CDC believes the potential cost savings from reduced effort for PHDs to locate infectious disease contacts are conservatively estimated.

TABLE 20—COST-PER-CONTACT

CDC	PHD
$180	$180

HHS/CDC obtained the total number of contacts traced (2,715 per year, Table 6) for all diseases reported on international flights. International flight data were extracted for this analysis because the codification of the requirements to provide timelier and more complete contact data is expected to have the greatest impact on HHS/CDC and PHD activities and potential benefits. In comparison, HHS/CDC requests contact information for approximately 664 contacts per year on interstate flights (Table 7). HHS/CDC also supports contact investigations affecting an average of 762 contacts per year for illnesses on board vessels (Table 8); however, many of these investigations occur before travelers disembark vessels. By limiting the analysis to contacts on international flights, HHS/CDC conservatively estimates the potential benefits associated with this NPRM. HHS/CDC multiplied the average annual number of contacts on international flights by the cost-per-contact for HHS/CDC and PHDs (Table 20) to estimate the costs of CIs under the current baseline.

To estimate the benefits (Table 21), HHS/CDC assumed a percent reduction in staff time for CIs at HHS/CDC (0–5%) and PHD levels (0–3%) based on internal conversations with personnel directly involved in the CI process. The reduction in staff time that would result from implementation of this NPRM would arise from the ability of HHS/CDC to have a better starting point with which to provide traveler contact data to state and local health departments as a result of the receipt of more complete and timely traveler contact data from airlines. This would improve HHS/CDC's ability to transmit information to destination states more quickly and for states to contact exposed travelers earlier. This would allow states to start their investigations more quickly, contact more travelers faster to conduct public health assessments and potentially offer preventive medications or vaccines in a more timely fashion. In addition, it would be less likely that HHS/CDC would send incorrect contact data to states. With all of the preceding factors in mind, HHS/CDC estimated that the NPRM would reduce labor time by between 0% to 5% at CDC, and 0% to 3% at PHDs. The higher percentage of avoided costs at HHS/CDC reflect reduced efforts by HHS/CDC to search for accurate contact data for travelers due to untimely or inaccurate data provided by airlines. The lower percentage of avoided costs at PHDs reflects a more diffuse (*e.g.,* multiple local PHDs in a state) infrastructure and the more labor-intensive tasks of following up on individuals. These estimates should be conservative if there is a substantial improvement by airlines in responding to requests for traveler contact data or if the change to the definition of "ill person" leads to more reports of ill travelers during travel.

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[47] Margaret S. Coleman, unpublished data.

[48] Coleman, M.S., Marienau, K.J., Marano, N., Marks, S.M., Cetron, M.S. (2014). "Economics of United States tuberculosis airline contact investigation policies: a return on investment analysis." *TMAID* 12(1):63–71.

[49] Personal communication from states to Dr. Margaret S. Coleman 2010.

[50] Discussion between Dr. Brian Maskery, Dr. Margaret S. Coleman and State and County Health Department contacts 11/21/2014.

HHS/CDC annual costs to engage in international air, interstate air, and maritime CIs are about $745,000 or roughly the equivalent of 3.8 HHS/CDC full-time employees (FTEs) at the wage level of GS–13, step 4 plus benefits and overhead (Table 21). The NPRM should have the greatest effect on the international air CIs. The annual reduction in contact tracing costs from implementing the NPRM (Table 22) for HHS/CDC ranged from $0 to $24,435 based on a 0–5% reduction in effort on international CIs. For PHDs, the reduction in costs ranged from $0 at the lower bound to $14,661 at the upper bound (Table 22).

TABLE 21—ANNUALLY FOR CDC AND PHD: BASELINE COSTS, NPRM COSTS, SAVINGS WITH THE NPRM

	Annual # contacts	CDC	PHD costs	Total costs
CDC and PHD Baseline Costs (Current Practice)				
International air contacts	2,715	$488,700	$488,700	$977,400
Interstate air contacts	664	119,520	119,520	239,040
Maritime contacts	762	137,160	137,160	274,320
Total baseline costs	4,141	745,380	745,380	1,490,760
Viral hemorrhagic fever, MERS, and SARS contacts	163	29,340	29,340	58,680

TABLE 22—ANNUAL FOR CDC AND PHDS: BASELINE COSTS, NPRM COSTS, BENEFITS WITH THE NPRM (# CONTACTS ANNUALIZED FROM JANUARY 2010 TO DECEMBER 2015), 2015 USD

CDC and PHD Baseline Costs (Current Practice)				
	Annual # contacts	CDC	PHD	
International contacts	2,715	$488,700	$488,700	
CDC and PHD Costs with the NPRM				
	Estimated costs for HHS/CDC after efficiency improvement with NPRM		Estimated costs for PHDs after efficiency improvement with NPRM	
	0%, Lower bound	5%, Upper bound	0%, Lower bound	3%, Upper bound
International contacts costs assuming reduction in time (2,715)	$488,700	$464,265	$488,700	$474,039
Benefits from Implementing the NPRM				
	CDC 0% and 5% reduction in effort		PHD 0% and 3% reduction in effort	
Benefits (Reduced costs)	$0	$24,435	$0	$14,661

The best estimate of benefits are the midpoint of the lower bound and upper bound estimates for both HHS/CDC and PHDs ($19,548). The lower bound ($0) and upper bound estimates ($39,096) for both entities are also reported in Table 23.

TABLE 23—BEST ESTIMATE, LOWER BOUND AND UPPER BOUND OF BENEFITS FROM INCREASED EFFICIENCIES FOR HHS/CDC AND PHDS TO CONDUCT CONTACT INVESTIGATIONS WITH PROVISION OF BETTER DATA FROM AIRLINES (NPRM), 2015 USD

	HHS/CDC benefits	PHD benefits	Total
Best estimate	$12,218	$7,331	$19,548
Lower bound	0	0	0
Upper bound	24,435	14,661	39,096

The total annual monetized benefits by stakeholder from the potential reduced effort for contact investigations are summarized in Table 24.

TABLE 24—BEST ESTIMATE, LOWER BOUND AND UPPER BOUND OF BENEFITS FROM INCREASED EFFICIENCIES FOR HHS/CDC AND PHDS TO CONDUCT CONTACT INVESTIGATIONS WITH PROVISION OF BETTER DATA FROM AIRLINES, 2015 USD

	HHS/CDC benefits, USD	PHD benefits, USD	Airlines, USD	Total
Best estimate	$12,218	$7,331	$0	$19,548
Lower bound	0	0	0	0
Upper bound	24,435	14,661	0	39,096

For the less restrictive alternative, the change relative to baseline is equal to the current cost of performing CIs ($745,000 each for HHS/CDC and local health departments or a total of about $1.5 million). Under the more restrictive alternative (*i.e.* implementing travel restrictions immediately upon evidence of widespread transmission of viral hemorrhagic fevers, SARS or MERS, the costs of these contact investigations are assumed to be avoided (potential savings to HHS/CDC of about $29,000 each or $59,000 in total). The benefits of the avoided contacted investigations are then added to the cost savings for the remaining contacts assuming a 0–5% improvement in HHS/CDC efficiency and a 0–3% improvement in Ph.D. efficiency as for the NPRM (Table 25).

TABLE 25—ESTIMATED BENEFITS ASSOCIATED WITH REDUCED COSTS TO CONDUCT CONTACT INVESTIGATIONS

	HHS/CDC benefits	PHD benefits	Total
NPRM			
Best estimate	$12,218	$7,331	$19,548
Lower bound	0	0	0
Upper bound	24,435	14,661	39,096
Less Restrictive Alternative:			
Best estimate	745,380	745,380	1,490,760
Lower bound	745,380	745,380	1,490,760
Upper bound	745,380	745,380	1,490,760
More Restrictive Alternative:			
Best estimate	41,558	36,671	78,228
Lower bound	29,340	29,340	58,680
Upper bound	53,775	44,001	97,776

Potential Reduction in Costs of Infectious Disease Outbreaks

For some diseases, there is empirical data from which on board transmission can be estimated. According to a published analysis of the outcomes of measles contact investigations (74 case-travelers on 108 flights resulting in 3,399 contacts) in the United States between December 2008 and December 2011, HHS/CDC could not assign 9% of measles contacts (322) to a health department due to insufficient contact data. Another 12% of these contacts (397) were believed to be outside the United States.[51] After HHS/CDC provides contact data to state health departments, HHS/CDC requests, but does not require health departments to provide data on the outcomes of their attempts to follow-up with travelers. Among the 2,673 contacts assigned to U.S. public health departments in 2008–11, HHS/CDC only received outcome data for 1,177 out of the 2,673 assigned contacts. This outcome data included reports from state health departments that 225 out of the 1,177 assigned contacts could not be located (19%). Among the 952 contacts for which HHS/CDC received measles outcome data from health departments, there were 9 lab-confirmed measles cases (1%). Since there may be reporting bias from health departments (*i.e.* health departments would be more likely to report outcome data for contacts that developed measles than for other exposed travelers that did not develop measles, HHS/CDC considers a range of measles incidence rates among exposed travelers from 9 cases/2,673 contacts assigned to health departments (0.34%) to 9 cases/952 exposed contacts with outcome data reported to HHS/CDC (0.95%). This probability could overstate or understate the true transmission rate depending on the length of the flight and seating configuration. On the other hand, it may understate the probability if cases were not reported or occurred overseas.

The majority of travelers exposed to measles on aircraft (~74%) had pre-existing immunity based on past measles immunization, past measles illness, or being born prior to 1957 and thus likely to have measles immunity even if they do not recall experiencing the disease.[52] Among the 952 exposed travelers, 8 cases occurred in the 247 contacts (3.2%) without known pre-existing immunity compared to 1 case in the 705 contacts with past history of vaccination or measles illness (0.1%). The median age of measles cases was 1.6 years.

Intervention by public health departments mitigates the risk of measles transmission in two ways. First, exposed travelers without measles immunity may be offered post-exposure prophylaxis with measles-containing vaccine (within 72 hours) or immune globulin (within 6 days),[53] which can prevent onset of disease, halting outbreaks before they begin. Under the status quo, relatively few exposed travelers receive post-exposure prophylaxis (just 11 out of 248 travelers with no history of measles immunization or infection). Second, exposed travelers would be counseled by health departments to self-isolate and seek treatment if they started to experience symptoms consistent with measles onset. For example infants exposed during travel and too young to be vaccinated could arrange for special precautions if they visit a pediatrician after becoming ill with measles-like symptoms to minimize the transmission to other unvaccinated infants. Both activities will limit the possibility of measles transmission to family members or others in the community. The attack rate for measles is estimated to be 90%, but the high background immunization rate and high efficacy of measles vaccine attenuates the burden of measles outbreaks in the United States.

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[51] Nelson, K., Marienau, K. J., Schembri, C. and Redd, S. (2013). "Measles transmission during air travel, United States." Travel Medicine and Infectious Disease (2013) 11, 81e89 11: 81–89.

[52] Nelson, K., Marienau, K. J., Schembri, C. and Redd, S. (2013). "Measles transmission during air travel, United States." Travel Medicine and Infectious Disease (2013) 11, 81e89 11: 81–89.

[53] Nelson, K., Marienau, K. J., Schembri, C. and Redd, S. (2013). "Measles transmission during air travel, United States." Travel Medicine and Infectious Disease (2013) 11, 81e89 11: 81–89.

In summary, the potential size of a measles outbreak occurring depends on:

- The number of persons contacted by the infectious measles patient
- Background immunity among persons contacted
  - Survey estimates have shown considerable heterogeneity in background vaccination rates such 80% of unvaccinated children live in counties comprising 40% of the total population.[54]

For tuberculosis, it is difficult to estimate the transmission rate on an aircraft or vessel. A modeling study suggests that the risk of infection is about 1/1000 on an 8.7 hour flight and that persons seated closer to the index case are at greater risk of infection.[55] Only 5–10% of persons infected with the bacteria *Mycobacterium tuberculosis* will go on to develop active, infectious disease and the risk of progression is greatest within the first two years after infection.[56]

An analysis of the epidemiology and outcomes of CDC-led flight-related tuberculosis contact investigations conducted in the United States from January 2007 to June 2008 involved 131 case-travelers and 4,550 passenger-contacts.[57] Among 3,375 (74%) passenger-contacts whose information was provided to health departments, HHS/CDC received results for 861 (26%). HHS/CDC found that 103/861 (12%) had a previous history of a positive TB screening test result or treatment for latent tuberculosis or active disease and were not re-tested. Of the remaining 758 passenger contacts, 182 (24%) tested positive. The majority of travelers with data about TB risk factors (other than exposure to cases during air travel) had at least one risk factor (130/142 or 92%). Risk factors included having been born or lived in a country with high TB prevalence (prevalence > 100 per 100,000 population). Although passenger-contacts with risk factors were more likely to have pre-existing latent tuberculosis infection, the authors could not exclude the possibility that infection was acquired during the flights when the travelers were exposed. Furthermore, because outcomes data were reported for only 26% of passenger contacts forwarded to US health departments (19% of all passenger contacts) the precise determination of in-flight transmission risk of M. tuberculosis was not feasible.[58]

The results from this investigation were used in a cost-effectiveness study to estimate the return on investment for tuberculosis CIs. The authors examined a range of latent tuberculosis prevalence rates among exposed travelers that varied between 19% to 24% for two different HHS/CDC CI protocols for flight-related TB investigations. The return on investment was calculated based on the likelihood that travelers with latent tuberculosis infection would initiate and complete a treatment regimen to clear the infection, the average cost of tuberculosis treatment, a tuberculosis case fatality rate of 5% and a conservative value of statistical life estimate of $4.2 million (in 2009 USD) to account for the value of mortality risk reduction from avoided tuberculosis disease. The return on investment depended on the probability assumed for persons with latent TB infection to develop active disease (5–10%) and variation in the costs to health departments to locate exposed travelers ($28 to $164). Using the expected latent tuberculosis prevalence rate of 19% in travelers identified for contact investigations on flights and a health department cost per contact of $164, the return on investment was estimated to vary between $1.01 and $3.20. The return on investment formula was calculated based on (Expected benefits – Expected costs)/Expected costs. Thus, for each $1 spent on contact investigations (including Federal and state resources) and offering treatment to persons infected with latent tuberculosis infections would result in benefits in excess of costs equal to $1.01 to $3.20[59][60] on average. At the upper bound latent tuberculosis prevalence estimate (24%), the return on investment was estimated to vary between $1.35 and $3.92.

There is also empirical data for SARS infections occurring on an aircraft. A study reported that 37 infections resulted from 40 flights with infectious passengers on board. Of the 40 flights, four have documented aircraft sizes. They average 127 passengers per plane.[61] Therefore the on board transmission rate could be estimated to be 0.73% among all travelers. In comparison, there is no evidence of transmission of MERS Coronavirus or viral hemorrhagic fevers during travel on aircraft or vessels. However, there have not been enough observations to determine that there is no risk.

For the remainder of the diseases, empirical data does not exist. Like measles, immunizations are recommended to prevent pertussis, rubella, and meningococcal disease. Since meningococcal conjugate vaccine was more recently added to the United States vaccination schedule, it is likely that background immunity is much lower relative to measles, rubella or pertussis.

In the absence of data for some diseases, the infection rate of measles is used to estimate the infection rates by using the ratio of basic reproduction numbers (R_0). The basic reproduction number is a measure of disease infectiousness. Specifically, it is an estimate of new infections in a completely susceptible population. For example, rubella has an R_0 of 9 to 10 while measles has an R_0 of 15 to 17.[62] The infection rate of measles is multiplied (0.0034 to 0.0095) by the ratio of the average basic reproductive numbers (9.5/16) to arrive at a transmission rate (0.002 to 0.006) for rubella on airplanes. This rate is approximately 60% of the rate for measles. The estimated transmission rates for some diseases are reported in Table 26. The exceptions are for meningococcal disease and tuberculosis. For meningococcal disease, the risk of transmission in household contacts 0.002 to 0.004[63] is used in the absence of other data and taking account that CIs are only performed for travelers sitting adjacent to the index case or in the event of other known exposures. For tuberculosis, the probability that exposed travelers have latent tuberculosis[64] (19%–24%) is used, although infection may have occurred prior to air travel. For the purposes of evaluating the economic impact of tuberculosis investigations, it does not matter if travelers were infected during travel or before.

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[54] Smith P, Marcuse E, Seward J, Zhao Z, WA O. Children and Adolescents Unvaccinated Against Measles: Geographic Clustering, Parents' Beliefs, and Missed Opportunities. Public Health Rep. 2015;5:485–504.

[55] Ko G, Thompson KM, Nardell EA. Estimation of tuberculosis risk on a commercial airliner. Risk Anal 2004;24:379e88.

[56] Marienau KJ, Cramer EH, Coleman MS, Marano N, Cetron MS. Flight related tuberculosis contact investigations in the United States: Comparative risk and economic analysis of alternate protocols. Travel Med Infect Dis. 2014;12(1):54–62.

[57] Marienau KJ, Burgess GW, Cramer E, et al. Tuberculosis investigations associated with air travel: US Centers for Disease Control and Prevention, January 2007–June 2008. Travel Med Infect Dis 2010;8:104e12.

[58] Marienau KJ, Burgess GW, Cramer E, et al. Tuberculosis investigations associated with air travel: US Centers for Disease Control and Prevention, January 2007–June 2008. Travel Med Infect Dis 2010;8:104e12.

[59] Coleman M, Marienau K, Marano N, Marks S, Cetron M, Dis TMI. Economics of United States Tuberculosis Airline Contact Investigation Policies. Travel Medicine and Infectious Disease. 2014;12:63–71.

[60] Marienau KJ, Burgess GW, Cramer E, et al. Tuberculosis investigations associated with air travel: US Centers for Disease Control and Prevention, January 2007–June 2008. Travel Med Infect Dis 2010;8:104e12.

[61] Mangili A, Gendreau MA. Transmission of infectious diseases during commercial air travel. Lancet. 2005;365:989–96.

[62] Anderson RM. The concept of herd immunity and the design of community-based immunization programmes. Vaccine. 1992;10(13):928–35.

TABLE 26—ESTIMATED TRANSMISSION RATE ON PLANE FOR EXPOSED TRAVELERS

Disease	R_0	Estimated transmission rate on aircraft to exposed passengers	
		Lower bound	Upper bound
Diphtheria	11 to 14	0.0026	0.0074
Measles	15 to 17	0.0034	0.0095
Meningococcal Disease	NA	<2/1000	<4/1000
Pertussis	4 to 5	0.001	0.003
Rubella	9 to 10	0.002	0.006
TB	NA	0.19	0.24

Estimated Number of Cases in Traveler Contacts

The number of potential contacts for each disease can be multiplied by the estimated transmission rate by disease in Table 26 to generate a rough estimate of the annual number of cases among traveler contacts. These numbers of contacts for each disease are summarized in Tables 6 and 7 for interstate and international CIs respectively. Contact investigations on vessels are excluded for this analysis. Based on this analysis, tuberculosis (19 to 48) and measles cases (3.6 to 10.1) are the most likely diseases that will be diagnosed among contacts exposed during travel (Table 27). Tuberculosis contact investigations only occur for international flights with the very rare exception of a domestic flight with a duration greater than 8 hours. The numbers of contacts and outcomes are much more uncertain for other diseases. The number of tuberculosis cases are adjusted from the number of contacts with tuberculosis by assuming that only 5% (lower bound) to 10% (upper bound) of infected contacts will go on to develop clinical disease.[65]

For viral hemorrhagic fevers and MERS, there is no evidence of transmission, but there have not been very many observations. The costs of a MERS outbreak in South Korea and U.S. Ebola cases are presented in another section of the RIA that analyzes the economic impact of the Ebola Enhanced entry risk assessment and management program.

TABLE 27—ANNUAL ESTIMATED NUMBER OF CASES AMONG INTERNATIONAL PASSENGER CONTACTS BY DISEASE

Passengers per flight	Number of contacts	Expected incidence among contacts (lower bound)	Expected incidence among contacts (upper bound)	Expected number of new cases (lower bound)	Expected number of new cases (upper bound)
MERS Coronavirus	101	Insufficient data			
Measles	1069	0.0034	0.0095	3.6	10.1
Meningococcal Disease	1.7	0.00200	0.00400	0.0033	0.0067
Pertussis	16.8	0.001	0.003	0.02	0.04
Rubella	117	0.002	0.006	0.2	0.7
TB[a]	1,995	[b]0.19	[b]0.24	[c]18.9	[c]47.90
Viral Hemorrhagic Fever	62.0	Insufficient data			
Total	3,362			22.8	58.7

[a] For tuberculosis, travelers contacts are typically found to test positive for infection, but do not have active disease.

[b] These probabilities indicate the likelihood that a contact will test positive for infection.

[c] The expected numbers of case adjust for the finding that only 5–10% of individuals that test positive for infection will go on to develop clinical disease.

These estimates of cases may be a lower bound, because potential cases resulting from flights in which contact investigations were not performed are not included. Especially for tuberculosis cases, many international travelers may return to their home countries before seeking treatment and such cases may not lead to contact investigations if HHS/CDC is not informed.

Impact of NPRM—Measles

On average, HHS/CDC identified 564 travelers exposed to measles cases on international flights during 2010–2015

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[63] Chapter 14. Meningococcal Disease, The Pink Book, CDC *http://www.cdc.gov/vaccines/pubs/pinkbook/mening.html* Accessed 5/2/2016.

[64] Marienau KJ, Burgess GW, Cramer E, et al. Tuberculosis investigations associated with air travel: US Centers for Disease Control and Prevention, January 2007–June 2008. Travel Med Infect Dis 2010;8:104e12.

[65]

(Table 6). The NPRM may affect the cost for health departments to implement public health measures in two ways: (1) Health departments may contact exposed travelers more quickly and (2) health departments may be able to contact a higher percentage of exposed travelers. For the first set of travelers that are contacted earlier with the NPRM than under the status quo, the cost to both the contacted travelers and to health departments should be less than under the status quo. For measles contacts, earlier follow-up with public health departments should lead to more travelers receiving measles vaccines within 72 hours. This would potentially reduce the cost of following up with exposed travelers or to administer immune globulin or to monitor travelers that have been located after the 72-hour window in which measles vaccination would reduce their risk of developing symptomatic measles. At present, very few travelers receive post-exposure prophylaxis, 11/248 or 4.4%.[66] In addition, health departments have implemented quarantine (usually voluntary) for unvaccinated, high risk measles exposures.[67] HHS/CDC notes that measles vaccine is recommended for all persons lacking immunity. Thus, the costs of vaccination for exposed travelers as part of the contact investigation may have been incurred at a later date if travelers' health care providers recommended measles vaccination at a more routine health care visit in the future.[68] However, to be conservative, HHS/CDC includes the full additional cost to administer such vaccines to persons contacted.

Among the contacts, HHS/CDC estimates that approximately 25% (141 contacts per year) cannot be located by public health departments (Table 28), either because HHS/CDC cannot assign the contacts to health departments or because the information provided by HHS/CDC is not sufficient to enable health departments to locate contacts after assignment from HHS/CDC. Among these contacts, HHS/CDC assumes that 10% of all contacts (56) are not located because HHS/CDC cannot assign contacts to state health departments due to insufficient data. For these contacts, health departments would not incur any contact tracing costs because such contacts would not be assigned. HHS/CDC assumes a 15% improvement from baseline as a result of this NPRM (Table 28). This would result in 8.5 additional contacts per year assigned to health departments for contact tracing. As shown in Table 20, HHS/CDC estimates that health departments incur an estimated cost of $180 per contact. The marginal cost incurred from this NPRM for additional measles contacts assigned to health departments would be $180 × 8.5 = $1,530 per year (Table 29).

TABLE 28—ESTIMATED MARGINAL IMPROVEMENT IN THE NUMBERS OF MEASLES CONTACTS WHO COULD BE TREATED WITH NPRM

Description	n	Reference
Average contacts per year for measles, (a)	564	Table 6.
Estimated number of contacts for which HHS/CDC cannot assign to a health department, (b) = 10% × (a).	56	Nelson et al. 2013[69].
Estimated improvement in HHS/CDC's ability to assign contacts to health department (c) = 15% × (b).	8.5	Assumption.
Numbers of people who are not currently contacted due to lack of contact information, (d)=(a) × 25%.	141	Nelson et al. 2013.
Expected numbers of people who could be contacted with NPRM, (e) = (d) × 15%	21	Assumption.
Among those contacted, 70% would have evidence of measles immunity (f) = (e) × 70%	15	Nelson et al. 2013 (Table 2).
Among those contacted, 30% may be susceptible to measles (g) = (e) × 30%	6	Nelson et al. 2013 (Table 2).

TABLE 29—ESTIMATED MARGINAL COSTS FOR HEALTH DEPARTMENTS TO CONTACT EXPOSED TRAVELERS AND OFFER MEASLES POST-EXPOSURE PROPHYLAXIS (VACCINATION), 2015 USD

Number of additional names sent to health department, (c)	8.5
Additional cost per contact to health department to search for and examine contacts (USD per contact) (h)	$180
Additional cost to health department to search for contacts, total (USD), (i) = (c) x (h)	$1,530
MMR vaccine price per dose (USD) (j)	$39
Vaccine administration cost (k)	$31
Estimated cost prophylactic measles vaccine per person (USD), (l) = (j) + (k)	$70
Number of individuals requiring measles vaccine, (g)	6
Cost of measles vaccination, total (USD) (m) = (g) x (l)	$420
Total additional annual cost to follow up with more contacts (USD), (i) + (m)	$1,950

In addition, HHS/CDC assumes that the NPRM could improve health departments' abilities to contact 15% of those who could not be currently contacted because of insufficient contact information (21 contacts per year). Among the 21 additional exposed travelers that would be contacted, 70% of them (15 per year) are expected to have measles immunity because they were born before 1957, had history of measles, or received one or more doses of measles vaccine. The remaining 6 travelers per year without proven measles immunity would incur additional costs to be vaccinated (Table 29).

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[66] Nelson K, Marienau K, Schembri C, Redd S. Measles transmission during air travel, United States. Travel Medicine and Infectious Disease (2013) 11, 81e89. 2013;11:81–9.

[67] P Kutty, J Rota, W Bellini, SB Redd, A Barskey, G Wallace. (2014) Manual for the Surveillance of Vaccine-Preventable Diseases: Chapter 7 Measles. *http://www.cdc.gov/vaccines/pubs/surv-manual/chpt07-measles.html.* Accessed 5/8/2016.

[68] CDC (2015) Epidemiology and Prevention of Vaccine-Preventable Diseases: Measles. *http://www.cdc.gov/vaccines/pubs/pinkbook/meas.html.* Accessed 5/8/2016.

[69] Nelson, K., Marienau, K. J., Schembri, C. and Redd, S. (2013). "Measles transmission during air travel, United States." Travel Medicine and Infectious Disease (2013) 11, 81e89 11: 81–89.

To be conservative, HHS/CDC assumes that all 6 exposed travelers would be adults and would be vaccinated with the measles-mumps-rubella (MMR) vaccine. The vaccine price for adults is estimated from the Vaccines for Children vaccine price archives (July 2014 and July 2015)[70] based on the public sector price for the vaccine. Vaccine administration costs are estimated from Healthcare Solutions' 2015 Physicians' Fee & Coding Guide (CPT 90471).[71] Total costs to vaccinate 6 people are estimated to be $420 at $70 per person vaccinated. Total costs resulting from the NPRM are summarized in Table 30.

TABLE 30—MARGINAL IMPACT OF NPRM TO IMPROVE CONTACT INVESTIGATIONS

Net cost for measles investigations	Additional names provided to health departments	Addition contacts reached by health departments	Number of travelers provided post-exposure prophylaxis	Number of travelers identified earlier	Average probability that contact is infected
$1,950	8.5	21	6	Unknown	0.0035—0.0095

Baseline Measles Burden

In the absence of interventions by public health departments, travelers infected with measles during international travel would be as likely as any other individuals to spark a measles outbreak. In fact, travelers exposed during international travel may be more likely to visit a high traffic tourist destination leading to more exposures than the average measles case in the United States. In the absence of HHS/CDC efforts to retrieve and transmit contact data, public health departments would not be able contact travelers to provide post-exposure prophylaxis and to self-monitor for potential measles symptoms.

For measles in 2011, 16 outbreaks occurred leading to 107 cases. An outbreak was defined based on 3 or more cases in a cluster.[72] The remaining 113 cases reported in 2011 resulted in one or two cases per cluster. Thus, the probability that any individual measles index case leads to an outbreak was between 16(16+113) = 12.4% and 16/(16+57) = 20.1%. The lower bound represents an assumption that all of the 113 cases unassociated with outbreaks of 3 or more cases occurred in clusters with just one case each. The upper bound represents a scenario with 56 clusters of two cases each with one cluster with one case. Thus, the probability that any individual measles case could spark an outbreak of 3 or more cases is 12.4% to 20.1%. The average cost to public health departments per measles outbreak is $250,000 and the upper bound cost is $1 million.[73]

HHS/CDC assumes that the probability that measles case resulting from exposure during travel and that is not contacted by a public health department is as likely as any other measles case to initiate a measles outbreak of 3 or more cases, which occurs at an approximate probability of 12.4% to 21.9%. The average cost to health departments is $250,000 for each of these outbreaks and the average outbreak size is about 7 cases (107 cases/16 outbreaks).

The estimated illness costs for measles are $300 ($86–$515) for outpatient cases and $24,500 ($3,900–$45,052) for inpatient cases.[74] The probability of hospitalization is estimated to be 44.3%.[75] A range of hospitalization rates is estimated based on 50% to 150% of this base case estimate (22%–66%). The measles case fatality rate has been estimated to be 0.2%.[76] HHS/CDC assumes that the value of statistical life is $9.4 million (range $4.3 million to $14.2 million). This value is an estimate of the average willingness to pay to reduce one's mortality risk by a small increment not an estimate of the value of any specific person's life. Using these estimate the average illness costs associated with a measles case (Table 31) is about $30,000 ($9,500 to $58,000).

TABLE 31—ESTIMATED ILLNESS AND MORTALITY COSTS FOR MEASLES CASES

	Best estimate	Lower bound	Upper bound
Outpatient cost, a	$300	$86	$515
Inpatient cost, b	$24,500	$3,943	$45,052
Hospitalization rate, c	44.30%	22.0%	66.0%
Case fatality rate, d	0.20%	0.2%	0.2%
VSL, e	$9,400,000	$4,300,000	$14,200,000
Total cost per case (b × c + a × (1 − c) + d × e)	$29,821	$9,535	$58,309

The estimated number of measles cases that will occur in contacts exposed during travel (3.6 to 10.1) can be multiplied by the probability of an outbreak with 3 or more cases (12.4% to 21.7%) to estimate the expected number of outbreaks in the absence of public health intervention to conduct contact investigations in exposed travelers. For each outbreak, HHS/CDC assumes that an average of 6 additional cases occur with associated morbidity and mortality costs. The estimated costs of measles outbreaks in the absence of contact investigations for exposed travelers is presented in Table 32.

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[70] *http://www.cdc.gov/vaccines/programs/vfc/awardees/vaccine-management/price-list/archive.html* Accessed 5/2/2016.

[71] InGauge Healthcare Solutions. 2015 Physicians' Fee & Coding Guide. Atlanta GA2013.

[72] Ortega-Sanchez IR, Vijayaraghavan M, Barskey AE, Wallace GS. The economic burden of sixteen measles outbreaks on United States public health departments in 2011. Vaccine. 2012;32(11).

[73] Ortega-Sanchez IR, Vijayaraghavan M, Barskey AE, Wallace GS. The economic burden of sixteen measles outbreaks on United States public health departments in 2011. Vaccine. 2012;32(11).

[74] Zhou F, Shefer A, Wenger J, Messonnier M, Wang LY, Lopez A, et al. Economic Evaluation of the Routine Childhood Immunization Program in the United States, 2009. Pediatrics. 2014;133:577–85.

[75] Mason WH, Ross LA, Lanson J, Wright HT. Epidemic measles in the postvaccine era: evaluation of epidemiology, clinical presentation, and complications during an urban outbreak. Pediatr Infect Dis J. 1993;12:42–8.

[76] Centers for Disease Control and Prevention. Epidemiology and Prevention of Vaccine-Preventable Diseases, 13th Edition- Measles April 2015 *http://www.cdc.gov/vaccines/pubs/pinkbook/downloads/meas.pdf* Accessed 6/13/2016.

TABLE 32—ESTIMATE ILLNESS, MORTALITY, PUBLIC HEALTH RESPONSE COSTS ASSOCIATED WITH MEASLES OUTBREAKS

	Best estimate	Lower bound	Upper bound
Estimated number of measles cases among contacts, a	6.85	3.6	10.1
Probability of measles outbreak, b	17%	12.4%	21.9%
Number of additional cases per outbreak, c	6	6	6
Estimated number of outbreaks, d = a × b	1.18	0.45	2.22
Estimated number of outbreak cases, e = a × b × c	7.06	2.68	13.29
Estimated health department costs per outbreak, f	$250,000	$250,000	$250,000
Estimated health department costs, g = f × d	$293,989	$111,607	$553,758
Average cost per case, h	$29,821	$9,535	$58,309
Estimated illness costs, I = h × e	$210,406	$25,539	$774,944
Estimated total costs, g + i	$504,395	$137,146	$1,328,703

HHS/CDC has not received any reports of large measles outbreaks associated with measles cases in patients exposed during travel and contacted by state or local public health departments. As a result, HHS/CDC believes that when measles cases occur in contacts reached by health departments, the probability of an outbreak is significantly mitigated by pre-warning of exposure before disease outset. Given that HHS/CDC estimates that health departments are able to reach approximately 75% of contacts under the status quo, HHS/CDC assumes that the risk of an outbreak has been reduced by at least 60% under the status quo. Further, HHS/CDC assumes that the provisions in the NPRM further improve health departments' ability to prevent measles outbreaks in cases that occur among travelers exposed during flights. A modest improvement of 15% is assumed (range 10%–20%) resulting in estimated benefits of about $45,000 ($8,000 to $159,000) in Table 33.

TABLE 33—ESTIMATED BENEFITS ASSOCIATED WITH IMPROVEMENT OF MEASLES CONTACT INVESTIGATIONS AS A RESULT OF THIS NPRM

	Best estimate	Lower bound	Upper bound
Estimated total costs without intervention, j = g + i	$504,395	$137,146	$1,328,703
Estimated effectiveness of outbreak prevention baseline, k	60%	60%	60%
Estimated cost of measles outbreaks under baseline, j × (1 − k)	$201,758	$54,858	$531,481
Estimated effectiveness of outbreak prevention with NPRM, l	69%	66%	72%
Estimated cost of measles outbreaks with NPRM, m = j × (1 − l)	$156,363	$46,630	$372,037
Estimated benefit associated with NPRM, n = j − m	$45,396	$8,229	$159,444

Alternatives—Measles Contact Investigations

For this analysis, under the less restrictive alternative, HHS/CDC assumes that no contact investigations are performed for measles. As a result, the probability of onward transmission from 3.6 to 10.1 measles patients exposed each year during travel greatly increases and is modeled based on the estimated costs of measles in the absence of intervention $504,000 (range: $137,000 to $1.3 million) (Table 33). Measles outcomes for the more restrictive alternative are the same as estimated for the NPRM since there is no difference in measles efforts between the NPRM and the more restrictive alternative. The comparative benefits relative to the status quo baseline are shown in Table 34. For the less restrictive alternative, costs are estimated based on an increase in measles outbreak costs relative to the baseline.

TABLE 34—ESTIMATED BENEFITS ASSOCIATED WITH AVERTED COSTS FROM MEASLES OUTBREAKS RELATIVE TO BASELINE

	Best estimate	Lower bound	Upper bound
Benefits			
NPRM	$45,396	$8,229	$159,444
Less Restrictive Alternative	0	0	0
More Restrictive Alternative	45,396	8,229	159,444
Costs			
NPRM	1,950	1,950	1,950
Less Restrictive Alternative [a]	201,758	54,858	531,481
More Restrictive Alternative	1,950	1,950	1,950

[a] For the less restrictive alternative, contact investigations are not performed so the cost can be estimated based on the estimated public health benefit of contact investigations performed under the baseline.

Effects on Tuberculosis Investigations

The expected benefits associated with reduced tuberculosis morbidity and mortality of contact investigations for exposed travelers are based on a previous analysis, which estimated a return on investment of $1.01 to $3.20 for the baseline situation in which an estimated 19% of exposed contacts are found to have latent tuberculosis infection.[77] The contact rate for exposed tuberculosis contacts is probably higher than for measles because the vast majority of tuberculosis contacts are exposed during international travel as exposed to measles contacts, which are approximately evenly divided between interstate and international travel.

The estimated costs for provide testing and treatment to contacts that test positive for latent tuberculosis infection are estimated to be $1,044 for infected contacts that complete a full course of treatment and $591 for infected contacts that discontinue treatment after 30 days.[78] Following the assumptions in the article, an estimated 28% of persons who test positive for latent tuberculosis infection do not start treatment. An estimated 46% start and complete treatment and the remaining 26% start, but do not complete treatment. The authors estimated that the risk of progression to active tuberculosis is reduced by 80% for those that complete treatment. The authors assumed that there is no effect for individuals that start, but do not complete treatment. HHS/CDC assumes that under the status quo that health departments are able to contact 75% of exposed travelers (based on the reported outcomes from measles contact investigations).[79]

The costs to provide treatment for latent tuberculosis infections under the status quo are summarized in Table 35. In total, the costs are almost $900,000 including about $720,000 to locate contacts and about $180,000 to provide treatment to individuals with latent tuberculosis infection.

TABLE 35—BASELINE ESTIMATED COSTS TO CONDUCT TUBERCULOSIS CONTACT INVESTIGATIONS AND TO PROVIDE TREATMENT

	Number of contacts	Estimated cost per contact	Estimated cost	Notes
Estimated cost of contact investigations	1,995	$360	$718,092	Number of contacts from Table 27 and cost per contact from Table 20.
Estimated number of contacts reached by health departments (75%).	1,496	NA	....	Estimated at 75% similar to measles from Table 28.
Estimated number of contacts reached by health departments and have latent TB infection (19% of 75%).	284	NA	....	Estimated 19% of contacts have LTBI (Table 27).
Number of contacts that never start treatment (28%).	79.6	0	0	28% of 284 contacts with LTBI.
Number of contacts that complete treatment (46%).	130.8	1,044	136,506	46% of 284 contacts with LTBI.
Number of contacts that start, but not compete treatment, (26%).	73.9	591	43,677	26% of 284 contacts with LTBI.
Total cost	....	....	898,275	

The benefits associated with tuberculosis contact investigations are estimated from a published article, which reported a range of $1.01 to $3.20. This analysis did not include the potential benefits from reduced onward transmission of tuberculosis among averted cases, potentially resulting in a conservative estimate of the return on investment. The formula used to derive estimated benefits from estimate costs and return on investment (ROI) is Estimated Costs × ROI + Estimated Costs. The estimated benefits are $2.6 million and are shown in Table 36 (range: $1.8 million to $3.8 million).

TABLE 36—BASELINE ESTIMATED COSTS AND BENEFITS FOR TUBERCULOSIS CONTACT INVESTIGATIONS, 2015 USD

	Best estimate	Lower bound	Upper bound	Notes
Estimate costs for contact investigations and treatment	$898,260	$898,260	$898,260	Table 35.
Return on investment from tuberculosis contact investigations	1.91	1.01	3.20	Coleman et al.
Estimated benefits	2,613,936	1,805,502	3,772,691	= Cost × ROI + Costs.

The provisions in the NPRM should result in a small increase (assumed 5–15%) in the number of contacts reached by health departments and offered treatment for latent tuberculosis infection. The estimated costs associated with this marginal improvement to reach more contacts can be estimated by multiplying the costs of providing latent tuberculosis ($180,000) by this range of improvement (5%–15%) as shown in Table 37. This results in marginal increased cost associated with NPRM of $18,000 (range: $9,000 to $27,000). The estimated benefits (Table 37) associated the NPRM are $52,000 (range: $18,000 to $114,000).

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[77] Coleman M, Marienau K, Marano N, Marks S, Cetron M, Dis TMI. Economics of United States Tuberculosis Airline Contact Investigation Policies. Travel Medicine and Infectious Disease. 2014;12:63–71.

[78] Coleman M, Marienau K, Marano N, Marks S, Cetron M, Dis TMI. Economics of United States Tuberculosis Airline Contact Investigation Policies. Travel Medicine and Infectious Disease. 2014;12:63–71.

[79] Nelson K, Marienau K, Schembri C, Redd S. Measles transmission during air travel, United States, December 1, 2008-December 31, 2011. Travel Med Infect Dis. 2013;11(2):81–9.

TABLE 37—ESTIMATED COSTS AND BENEFITS FOR TUBERCULOSIS CONTACT INVESTIGATIONS ASSOCIATED WITH THIS NPRM, 2015 USD

	Best estimate	Lower bound	Upper bound	Notes
Baseline contact investigation costs	$718,080	$718,080	$718,080	
Baseline latent tuberculosis treatment costs	180,180	180,180	180,180	Table 35 costs for latent tuberculosis treatment and testing.
Estimated improvement in health departments' abilities to contact exposed travelers.	10%	5%	15%	Assumed.
Estimated increased cost for latent tuberculosis treatment under NPRM.	18,018	9,009	27,027	Estimated cost for improvement in contact rate as result of NPRM.
Estimated costs under NPRM	916,278	907,269	925,287	Estimated baseline cost + increased cost as result of NPRM.
Estimated ROI	1.91	1.01	3.20	Table 35.
Estimated benefits for NPRM	2,666,368	1,823,610	3,886,204	= Cost × ROI + Costs.
Estimated costs associated with NPRM	18,018	9,009	27,027	Calculated from the difference in costs for the NPRM—Baseline costs.
Estimated benefits associated with NPRM	52,432	18,108	113,513	Calculated from the difference in benefits for the NPRM − Baseline benefits.

Alternatives—Tuberculosis Contact Investigations

Under the less restrictive alternative, tuberculosis contact investigation are no longer conducted for persons exposed during travel. Relative to the baseline, there are neither costs to conduct such investigations (resulting in benefits of about $180,000 to forego providing treatment for latent tuberculosis treatment) or benefits associated with reduced tuberculosis morbidity and mortality. Relative to the baseline, the estimated cost of increased tuberculosis morbidity and mortality is estimated to be $2.6 million (range: $1.8 million to $3.8 million). Under the more restrictive alternative in which suspension of entry is enforced in response to quarantinable communicable disease outbreaks, there is no change relative to the NPRM results because it is unlikely that a tuberculosis outbreak would cause suspension of entry. Results are summarized in Table 38.

TABLE 38—CHANGES IN TUBERCULOSIS CONTACT INVESTIGATIONS COSTS AND BENEFITS RELATIVE TO BASELINE, 2015 USD

	Best estimate	Lower bound	Upper bound	Notes
		Benefits		
NPRM	$52,432	$18,108	$113,513	Table 37.
Less Restrictive Alternative	180,180	180,180	180,180	Assumed to be the cost to provide LTBI treatment under the baseline (Table 37).
More Restrictive Alternative	52,432	18,108	113,513	The more restrictive alternative has the same effect on TB contact investigations as NPRM.
		Costs		
NPRM	18,018	9,009	27,027	Table 37.
Less Restrictive Alternative	2,613,936	1,805,502	3,772,691	Estimated based on the benefits of avoided TB morbidity and mortality resulting from contact investigations under the baseline.
More Restrictive Alternative	18,018	9,009	27,027	The more restrictive alternative has the same effect on TB contact investigations as NPRM.

Total Costs and Benefits for Measles and Tuberculosis Contact Investigations

The total costs for measles and tuberculosis contact investigation activities are estimated by summing the costs and benefits of measles contact investigations (Table 34) and tuberculosis contact investigations (Table 38). The results are summarized in Table 39.

TABLE 39—CHANGES IN MEASLES AND TUBERCULOSIS CONTACT INVESTIGATIONS COSTS AND BENEFITS RELATIVE TO BASELINE, 2015 USD

	Best estimate	Lower bound	Upper bound
	Benefits		
NPRM	$97,828	$26,337	$272,958
Less Restrictive Alternative	180,180	180,180	180,180

TABLE 39—CHANGES IN MEASLES AND TUBERCULOSIS CONTACT INVESTIGATIONS COSTS AND BENEFITS RELATIVE TO BASELINE, 2015 USD—Continued

	Best estimate	Lower bound	Upper bound
More Restrictive Alternative	97,828	26,337	272,958
Costs			
NPRM	19,968	10,959	28,977
Less Restrictive Alternative	2,815,694	1,860,360	4,304,172
More Restrictive Alternative	19,968	10,959	28,977

Note: This table includes the sum of results in Tables 34 and 38.

Total Annual Benefits Resulting from Codification of traveler data collection (71.4 and 71.5) and Change to Definition of "Ill Person" (70.1 and 71.1) Leading to Improved Contact Investigations and Health Outcomes for Measles and Tuberculosis.

The total quantified benefits (Table 40) resulting from the improvement of the quality and timeliness of traveler contact data or the improvement of illness reporting is summarized by summing the improved efficiency for HHS/CDC to provide contact data to health departments and improved efficiency for health departments to contact exposed travelers (Table 23) and the reductions associated with measles and tuberculosis morbidity and mortality (Table 39).

TABLE 40—TOTAL ANNUAL COSTS AND BENEFITS ASSOCIATED WITH IMPROVED EFFICIENCY PUBLIC HEALTH RESPONSE ACTIVITIES, 2015 USD

	Best estimate	Lower bound	Upper bound
Benefits			
NPRM	$117,376	$26,337	$312,054
Less Restrictive Alternative	1,670,940	1,670,940	1,670,940
More Restrictive Alternative	176,056	85,017	370,734
Costs			
NPRM	$19,968	$10,959	$28,977
Less Restrictive Alternative	2,815,694	1,860,360	4,304,172
More Restrictive Alternative	19,968	10,959	28,977

The benefits and costs associated with improved effectiveness of contact investigations (Table 40) can be combined with the increased costs to airlines, vessel operators, DOT/FAA, and HHS/CDC to submit and respond to illness reports or to provide more timely and complete traveler contact data for manifest requests (Table 19) to estimate the total annual costs and benefits of the NPRM and for the less restrictive and more restrictive alternatives (Table 41).

TABLE 41—TOTAL ANNUAL COSTS AND BENEFITS OF THE NPRM, LESS RESTRICTIVE AND MORE RESTRICTIVE ALTERNATIVES, 2015 USD

	Best estimate	Lower bound	Upper bound
Benefits			
NPRM	$117,376	$26,337	$312,054
Less Restrictive Alternative	1,777,179	1,777,179	1,777,179
More Restrictive Alternative	177,954	86,915	372,632
Costs			
NPRM	35,785	10,959	65,644
Less Restrictive Alternative	2,815,694	1,860,360	4,304,172
More Restrictive Alternative	36,317	11,807	65,860

Other Diseases (Besides Measles and Tuberculosis)

HHS/CDC does not have sufficient data to quantify the health impact of contact investigations for pertussis, rubella, varicella (vessels only), viral hemorrhagic fevers (including Ebola), MERS, or SARS. HHS/CDC does attempt to continuously update its contact investigation protocols based on available evidence. In the past few years, HHS/CDC has stopped requesting data to conduct mumps contact investigations[80] and has modified its protocol to reduce the number of tuberculosis contact investigations.[81]

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[80] Nelson KR, Marienau KJ, Barskey AE, Schembri C. No evidence of mumps transmission during air travel, United States, November 1, 2006—October 31, 2010. Travel Medicine and Infectious Disease. 2012;10:165–71.

Experience from interstate flight contact investigations suggest that travelers want to know when they have been exposed to communicable diseases during flights. The first Ebola contact investigation conducted in the United States in October, 2014, found that 60 travelers out of 164 had no contact information on the manifest that was provided by the airline. After an all-night effort by CBP's National Targeting Center, there were still 24 travelers with no contact information. A second request was made to the airline after it was announced to the media that the airline had contacted over 800 travelers, including travelers who had flown on the same plane subsequent to the flight with the Ebola. At that time the airline was able to provide HHS/CDC more complete information for all travelers. On a second flight, no contact information was provided to HHS/CDC for 111/132 travelers. HHS/CDC again had to request significant assistance from the National Targeting Center to obtain additional contact information. Despite 24 staff-hours spent searching, 28 travelers did not have sufficient information to be able to locate them. HHS/CDC released the flight information in order to inform the public in the hope that the remaining travelers would contact CDC.

It is likely that the need for CDC to put out media requests for travelers to contact the Agency created a level of fear in the general population that may not have been necessary if better contact data were available. In addition, this fear may have led to non-health costs (such as fear of airplane travel) that would have been mitigated if the Agency were able to contact all passengers without the media request. HHS/CDC would like to solicit public comment about potential public willingness to pay to be contacted in the event of exposure to a communicable disease during travel to help estimate the potential benefit to the public of HHS/CDC efforts to work with health departments to contact travelers exposed to meningitis, viral hemorrhagic fevers (including MERS or SARS) among other diseases.

In summary, improved alignment between regulatory text and HHS/CDC's publicly available guidance should reduce compliance costs for airlines and vessel operators while improving HHS/CDC's ability to respond to public health threats associated with international and interstate travel. To the extent that airlines and vessel operators improve responsiveness to HHS/CDC traveler data requests, HHS/CDC may become better able to respond to infectious diseases threats and (1) reduce case-loads during infectious disease outbreaks, (2) reduce public anxiety during disease outbreaks, (3) mitigate economic impacts on businesses as a consequence of reduced public anxiety, and 4) reduce the amount of personnel labor time to conduct large-scale CIs in response to a new infectious disease or one with serious public health and medical consequences like Ebola .

Codification of Current Practice (Multiple Provisions in NPRM)

HHS/CDC does not expect that most of the provisions included in the NPRM will result in measurable changes relative to the economic baseline. The primary purpose of the provisions summarized in list below is to elucidate how HHS/CDC interprets its current statutory and regulatory authority under the Public Health Service Act and 42 CFR 70 and 71 regulations. HHS/CDC is grouping the mirror provisions in 70 and 71 in the list below, when they align, to facilitate public review of the current and proposed provisions. These changes are not intended to provide HHS/CDC with new regulatory authorities, but rather to clarify the agency's standard operating procedures and policies, and due process rights for individuals. HHS/CDC believes that such clarity is an important qualitative benefit of the provisions proposed this NPRM, but is not able to monetize this impact in a robust way.

• Proposed Provisions: § 70.5 Requirements relating to travelers under a Federal order of isolation, quarantine, or conditional release.

○ Baseline and Current Regulatory Provision: § 70.5 Certain communicable disease; special requirements.

■ Without the NPRM, HHS/CDC may issue Federal orders to restrict travel for persons infected or exposed to quarantinable communicable diseases. However, this process is less transparent and efficient than allowing travel (*i.e.* issue travel permits to allow interstate travel to persons under Federal orders for diseases not currently identified under existing 42 CFR 70.5.) Under current practice, HHS/CDC issues approximately one Federal order per year, most frequently for tuberculosis, which is a disease not included in the current 70.5.

○ Change relative to baseline as result of NPRM

■ With the NPRM, HHS/CDC is proposing to align the list of diseases for which individuals under Federal orders may be allowed to travel with the quarantinable communicable diseases specified in Executive Order. A potential future qualitative benefit would be to reduce uncertainty by the individual subject to the order, carrier operators, and cooperating health and law enforcement entities about whether HHS/CDC could issue a travel permit to an individual under a Federal order and quantifiable benefit would be the avoided cost of potential legal challenge.

○ Qualitative benefit/cost of NPRM

■ Improved transparency for HHS/CDC's ability to allow individuals under Federal orders to issue travel permits to allow individuals to travel (interstate). HHS/CDC may allow persons under Federal orders to travel interstate for whom there is greater uncertainty regarding HHS/CDC restricting their travel.

○ Monetized benefit/cost of NPRM

■ Increased clarity around due process may result in fewer resources and time expended by individuals under orders and HHS/CDC in disagreements over HHS/CDC's authority to issue Federal public health orders that limit an individual's movement. This includes the potential costs of litigation and associated activities.

• Proposed provisions: § 70.6 Apprehension and detention of persons with specific diseases; § 71.32 Persons, carriers, and things (no change to title)

○ Baseline and Current Regulatory Provision:

■ Under § 70.6 Apprehension and detention of persons with specific diseases and § 71.32 Persons, carriers, and things HHS/CDC currently has regulatory authority to apprehend and detain individuals with quarantinable communicable diseases.

○ Change relative to baseline as result of NPRM

■ As a result of these proposed provisions, the major change would be improved transparency of HHS/CDC's regulatory authority with regard to the issuance of Federal quarantine, isolation, or conditional release orders of individuals traveling interstate.

○ Qualitative benefit/cost of NPRM

■ Improved transparency and compliance with Federal orders.

○ Monetized benefit/cost of NPRM

■ Increased clarity around due process may result in fewer resources and time expended by individuals under orders, cooperating entities, and CDC in disagreements over HHS/CDC's authority to issue Federal public health orders that limit an individual's movement. This includes the potential costs of litigation and associated activities.

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[81] Marienau KJ, Cramer EH, Coleman MS, Marano N, Cetron MS. Flight related tuberculosis contact investigations in the United States: comparative risk and economic analysis of alternate protocols. Travel Med Infect Dis. 2014;12(1):54–62.

- Proposed Provisions: § 70.10 Public health prevention measures to detect communicable disease; § 71.20 Public health prevention measures to detect communicable disease.
  - Baseline and Current Regulatory Provisions: No explicit regulatory provision.
    - In the absence of the NPRM and under existing statutory authority provided in the Public Health Service Act, HHS/CDC could still implement public health measures at locations where individuals may gather for interstate travel or at U.S. ports of entry. However, without concrete regulatory authority to require such measures, travelers may not comply, either by refusing to answer risk assessment questions or providing false information. This lack of compliance may require that HHS/CDC, if it reasonably believes that the individual is infected with or has been exposed to a quarantinable communicable disease, to quarantine, isolate, or place the individual under surveillance under 42 CFR 71.32 and 71.33. HHS/CDC has not implemented public health measures at locations where individuals may congregate for the purposes of interstate travel in at least 50 years and cannot predict if or how often it may implement measures in the future.
  - Change relative to baseline as result of NPRM
    - Improved transparency and potentially improved compliance in the event that HHS/CDC implements such measures in the future.
  - Qualitative benefit/cost of NPRM
    - Improved transparency and public understanding of HHS/CDC's rationale and authority to conduct such measures and require individuals to comply.
  - Monetized benefit/cost of NPRM
    - Increased clarity around due process may result in fewer resources and time expended by individuals under orders and HHS/CDC in disagreements over HHS/CDC's authority to issue Federal public health orders that limit an individual's movement. This includes the potential costs of litigation and associated activities.
- Proposed Provisions: § 70.12 Medical examinations; § 71.36 Medical Examinations
  - Baseline and Current Regulatory Provisions: 71.33 Persons: Isolation and Surveillance.
    - This is carried out under statutory authority and under the regulatory authorities in 42 CFR 71.33 Persons: Isolation and surveillance, which have been interpreted to allow for medical examinations of individuals under Federal orders.
  - Change to baseline as result of NPRM
    - With the NPRM, the major change would be an alignment between the statutory language in the Public Health Service Act and improved transparency of HHS/CDC's regulatory authority.
  - Qualitative benefit/cost of NPRM
    - Improved transparency and public understanding of HHS/CDC's rationale and authority to conduct such measures and require individuals to comply.
  - Monetized benefit/cost of NPRM
    - Increased clarity around due process may result in fewer resources and time expended by individuals under orders, cooperating entities, and HHS/CDC in disagreements over HHS/CDC's authority to issue Federal public health orders that limit an individual's movement. This includes the potential costs of litigation and associated activities.
- Proposed Provisions: § 70.14 Requirements relating to the issuance of a Federal order for quarantine, isolation, or conditional release; § 71.37 Requirements relating to the issuance of a Federal order for quarantine, isolation, or conditional release
  - Baseline and Current Regulatory Provisions: No current explicit regulatory provision
    - Without the NPRM, HHS/CDC can under current statutory provided by the Public Health Service Act and regulatory authority continue to issue Federal quarantine, isolation, or condition release orders. However, the process executed under statutory authority and internal policy and standard operating procedures derived from regulations at 42 CFR 71.32 Persons, carriers, and things and 71.33 Persons: Isolation and Surveillance, which is not as transparent to the public as an explicit regulation outlining requirements.
  - Change to baseline as result of NPRM
    - Improved transparency around HHS/CDC's authority for, and requirements and processes related to, the issuance of Federal quarantine, isolation, and conditional release orders.
  - Qualitative benefit/cost of NPRM
    - Improved transparency and public knowledge of HHS/CDC's procedures and regulatory requirements.
  - Monetized benefit/cost of NPRM
    - None. This is a clarification of HHS/CDC's current practice.
- Proposed Provisions: § 70.15 Mandatory reassessment of a Federal order for quarantine, isolation, or conditional release; § 71.38 Mandatory reassessment of a Federal order for quarantine, isolation, or conditional release
  - Baseline and Current Regulatory Provisions: No current explicit regulatory provision.
    - Without the NPRM, HHS/CDC can under current statutory authority provided by the Public Health Service Act and regulatory authority under 42 CFR 71.32 Persons, carriers, and things and 71.33 Persons: Isolation and Surveillance continue to issue Federal quarantine, isolation, or condition release orders. However, the process for a reassessment of a Federal order is executed under internal policy and standard operating procedures, which is not as transparent to the public as regulation.
  - Change to baseline as result of NPRM:
    - With the NPRM, individuals under Federal order may be more aware of mandatory reassessment of a Federal quarantine, isolation, or conditional release order.
  - Qualitative benefit/cost of NPRM
    - Improved transparency and understanding of due process protections under a Federal public health order.
  - Monetized benefit/cost of NPRM
    - Increased clarity around due process may result in fewer resources and time expended by individuals under orders and HHS/CDC in disagreements over HHS/CDC's authority to issue Federal public health orders that limit an individual's movement. This includes the potential costs of litigation and associated activities.
- Proposed Provisions: § 70.16 Medical review of a Federal order for quarantine, isolation, or conditional release; § 71.39 Medical review of a Federal order for quarantine, isolation, or conditional release
  - Baseline and Current Regulatory Provisions: No current explicit regulatory provision.
    - Without the NPRM, HHS/CDC can under current statutory authority provided by the Public Health Service Act and regulatory authority under 42 CFR 71.32 Persons, carriers, and things and 71.33 Persons: Isolation and Surveillance continue to issue Federal quarantine, isolation, or condition release orders. However, the process for a medical review of a Federal order is executed under internal policy and standard operating procedures, which is not as transparent to the public as regulation.

◦ Change to baseline as result of NPRM:

▪ With the NPRM, individuals under Federal order may become aware of their right to a medical review, and exercise that right, under this due process provision.

◦ Qualitative benefit/cost of NPRM

▪ Improved transparency and understanding of due process afforded to individuals under a Federal order

◦ Monetized benefit/cost of NPRM

▪ Increased clarity around due process may result in fewer resources and time expended by individuals under orders and HHS/CDC in disagreements over HHS/CDC's authority to issue Federal public health orders that limit an individual's movement. This includes the potential costs of litigation and associated activities.

• Proposed Provisions: § 70.17 Administrative records relating to Federal quarantine, isolation, or conditional release; § 71.29 Administrative records relating to Federal quarantine, isolation, or conditional release

◦ Baseline and Current Regulatory Provisions: No current explicit regulatory provision.

▪ Without the NPRM, HHS/CDC can issue under current statutory provided by the Public Health Service Act and regulatory authority under 42 CFR 71.32 Persons, carriers, and things and 71.33 Persons: Isolation and Surveillance continue to issue Federal quarantine, isolation, or condition release orders. However, the process and requirement for documentation for the administrative record is executed under statutory authority, internal policy and standard operating procedures, which is not as transparent to the public as regulation.

◦ Change to baseline as result of NPRM

▪ The requirement, with which HHS/CDC is already complying, will clarify for the public that certain documents must be retained for the administrative record.

◦ Qualitative benefit/cost of NPRM

▪ Improved transparency

◦ Monetized benefit/cost of NPRM

▪ Not applicable. This is a codification of an administrative activity within HHS/CDC.

• Proposed Provisions: § 70.18 Agreements; § 71.40 Agreements

◦ Baseline and Current Regulatory Provisions: No current explicit regulatory provision.

▪ Without the NPRM, individuals may not be aware of the agreement process. HHS/CDC can under current statutory and regulatory authority continue to issue Federal quarantine, isolation, or condition release orders. However, the process and requirement for documentation for the consent process is executed under statutory authority, internal policy and standard operating procedures, which is not as transparent to the public as regulation.

◦ Change to baseline as result of NPRM

▪ With the NPRM, individuals are more likely to be aware of the agreement process.

◦ Qualitative benefit/cost of NPRM

▪ Improved transparency

◦ Monetized benefit/cost of NPRM

▪ Increased clarity around due process may result in fewer resources and time expended by individuals under orders, cooperating entities, and HHS/CDC in disagreements over HHS/CDC's authority to issue Federal public health orders that limit an individual's movement. This includes the potential costs of litigation and associated activities.

• Proposed Provisions: § 70.19 Penalties/§ 71.2 Penalties

◦ Baseline and Current Regulatory Provision: § 71.2 Penalties. Part 70 currently has no penalties provision.

▪ Without the NRPM, individuals may not be aware of the increase in the maximum allowable penalties for a violation of regulations under 42 CFR 70 and 71. And it may not be clear to individuals that a violation of quarantine regulation found in 42 CFR part 70 may result in penalties.

◦ Change to baseline as result of NPRM

▪ With the NRPM, there will be less confusion about the maximum allowable penalties for a violation of regulations under 42 CFR 70 and 71.

◦ Qualitative benefit/cost of NPRM

▪ Improved transparency and alignment with current law under 18 U.S.C. 3559 and 3571.

◦ Monetized benefit/cost of NPRM

▪ No individual has been issued a penalty under this regulation, so monetizing this benefit or cost is not feasible. This is simply an effort to align the domestic and foreign quarantine penalties provisions, and updates outdated regulatory language so that it reflects current statutory language concerning criminal penalties.

The 2014–2016 Ebola Outbreak

The costs and benefits from the 2014–2016 Ebola enhanced entry risk assessment and management program are used to demonstrate the costs and benefits of implementation of its regulatory authorities, and are especially relevant when analyzing the effects of the rule relative to a non-status quo baseline. Although most of the costs incurred by HHS/CDC, DHS/CBP, and travelers can be quantified, the benefits are more difficult to quantify. This program is chosen because of its significant economic impacts. For this outbreak analysis, a less restrictive alternative would be for HHS/CDC not to execute its existing regulatory authorities to implement the Ebola enhanced entry risk assessment and management program. The more restrictive alternative would be a suspension of entry for persons from countries with widespread transmission for a period of 21 days (equivalent the maximum expected incubation period for Ebola disease).

The quantified cost of the Ebola enhanced entry risk assessment and management program ($109 million) outweighs what HHS/CDC estimates as directly associated-benefits ($7.7 million), but there are multiple benefits that HHS/CDC could not estimate. Around the time the program was implemented, public opinion surveys ranked Ebola as the third highest health care concern among a list of issues facing the country, only health care costs and access to care ranked higher. The same poll found that about 45% were either somewhat worried or very worried that they or someone in their family could become sick with Ebola. The Ebola enhanced entry risk assessment and management program in combination with a number of other Federally-funded initiatives helped reduce the potential risk for Ebola exposure in the United States from travelers from the affected countries to almost zero.[82] The average cost per American citizen for these programs was approximately $17. Thus, if willingness to pay for such a risk reduction was greater than $17 per person on average, the programs would pass a cost-benefit test. Finally HHS/CDC examined the economic impact of the recent MERS outbreak in South Korea and asks the question, what would be the cost to the United States if an outbreak of similar magnitude occurred. HHS/CDC estimates the cost of such an outbreak could be as much as $58 billion indicating the potential costs associated with unexpected outbreaks of quarantinable communicable diseases.

In late 2014, two imported cases of Ebola were identified in the United States, one of which resulted in two domestic cases and extensive contact investigations in the community and for travelers on two domestic flights.[83] [84] [85] [86]

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[82] SteelFisher GK, Blendon RJ, Lasala-Blanco N. Ebola in the United States—Public Reactions and Implications. N Eng J Med. 2015;373:789–91.

Around the same time, some political leaders and members of the public demanded increasing the domestic response, including banning air travel between the United States and the three countries with widespread transmission.[87] Many public health professionals cautioned that such a ban would cause greater harm than good to the public health response by hampering travel of responders and delivery of supplies into the region and paradoxically could increase the risk for spread via covert and circuitous travel routes.[88] [89] The paradox results because travel restrictions cannot stop people from moving across borders and spreading disease to new countries, especially because such travel is often more difficult to track than if travel is not restricted entirely.[90]

To reduce the risk of importation of Ebola to the United States, HHS/CDC supported the implementation of exit screening at international airports in countries with widespread Ebola transmission. After Ebola spread from Liberia to Nigeria by air travel, concerned airlines canceled flights to Guinea, Liberia, and Sierra Leone, and multiple countries closed their borders to travelers from these countries; [91] the shortage of commercial flights caused delays to the provision of humanitarian aid, resulting in shortages of medical supplies, personal protective equipment, and food.[92] The few airlines that continued to fly to the countries with Ebola outbreaks insisted that departing travelers be screened before boarding.[93] HHS/CDC Border Health teams in Guinea, Liberia, Nigeria, and Sierra Leone, and later Mali and Senegal, helped airport and health authorities implement airport exit screening measures that included administering an exposure-and-symptom questionnaire and at least one temperature check with a handheld noncontact thermometer to all departing passengers. Health screeners were trained to conduct secondary assessments of travelers who reported possible exposures or who had symptoms compatible with Ebola. Symptomatic or exposed travelers were denied boarding and referred for further medical and public health assessment. As national databases of known contacts became more robust, they were matched against passenger manifests for departing flights. These measures helped countries with Ebola outbreaks meet WHO recommendations and ensured that some commercial air carriers continued to fly to these countries, serving as vital conduits for supplies and response personnel.

During August 2014–January 2016, approximately 300,000 travelers were screened in Guinea, Liberia, and Sierra Leone. Only four cases of Ebola were exported through air travel to other countries (United States [two cases], United Kingdom [one case], Italy [one case]) after exit screening was implemented; none of the infected travelers were overtly symptomatic at the time of travel.[94] [95] [96] [97] No Ebola cases were reported to have been detected during exit screening.

To build on the exit screening already in place, HHS/CDC collaborated with the U.S. Department of Homeland Security to initiate an enhanced entry risk assessment and management program for travelers from countries with Ebola outbreaks. This unprecedented operation required coordination across multiple U.S. government agencies, as well as with airport authorities and health departments in all U.S. states and territories.[98]

HHS/CDC issued revised interim guidance in October 2014 [99] after the first imported case of Ebola in the United States was identified (and initially diagnosed as presumed sinusitis) in Dallas, Texas;[100] an infected U.S. health care worker (HCW) flew on two domestic commercial flights, causing panic among U.S. travelers and disrupting the travel industry;[101] [102] [103] and an infected humanitarian aid worker was reported to have been in public areas, including the New York City subway, during the early stages of his illness.[104] [105] CDC's guidance was revised in response to assertions that self-monitoring was insufficient; growing concerns about infected HCWs in Spain, the United

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[84] McCarty CL, Basler C, Karwowski M, et al. Response to importation of a case of Ebola virus disease—Ohio, October 2014. MMWR Morb Mortal Wkly Rep 2014;63:1089–91.

[85] Regan JJ, Jungerman R, Montiel SH, et al. Public health response to commercial airline travel of a person with Ebola virus infection—United States, 2014. MMWR Morb Mortal Wkly Rep 2015;64:63–6.

[86] Yacisin K, Balter S, Fine A, et al. Ebola virus disease in a humanitarian aid worker—New York City, October 2014. MMWR Morb Mortal Wkly Rep 2015;64:321–3.

[87] McAuliff M. Lawmakers ignore experts, push for Ebola travel ban. The Huffington Post. October 16, 2014. *http://www.huffingtonpost.com/2014/10/16/congress-ebola_n_5997214.html9*. Nuzzo JB, Cicero AJ, Waldhorn R, Inglesby TV. Travel bans will increase the damage wrought by Ebola. Biosecur Bioterror 2014;12:306–9. *http://dx.doi.org/10.1089/bsp.2014.1030*

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[93] Anderson M. Ebola: airlines cancel more flights to affected countries. The Guardian. August 22, 2014. *http://www.theguardian.com/society/2014/aug/22/ebola-airlines-cancel-flights-guinea-liberia-sierra-leone*. Accessed 6/9/2016.

[94] Chevalier MS, Chung W, Smith J, et al. Ebola virus disease cluster in the United States—Dallas County, Texas, 2014. MMWR Morb Mortal Wkly Rep 2014;63:1087–8.

[95] Yacisin K, Balter S, Fine A, et al. Ebola virus disease in a humanitarian aid worker—New York City, October 2014. MMWR Morb Mortal Wkly Rep 2015;64:321–3.

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States, and the West African countries with Ebola outbreaks;[106] [107] [108] [109] and renewed calls for travel bans.[110] Demands to restrict movement of HCWs caring for patients with Ebola were countered by predictions that stringent restrictions would discourage HCWs from supporting the response in West Africa or taking care of patients with Ebola at designated facilities in the United States.[111] [112] The revised guidance recommended that state or local public health authorities assume responsibility for monitoring all potentially exposed persons for the duration of the 21-day incubation period (active monitoring); established a higher standard of monitoring (direct active monitoring that included daily direct observation by public health officials) for persons with greater potential risk for exposure, including HCWs; and provided guidance for possible application of movement restrictions within communities. Although CDC's guidance represented a minimum standard, states could, and in many cases did, apply more restrictive measures (*e.g.,* temporarily quarantining HCWs returning from West Africa).[113] Many of these measures were enacted before CDC issued the updated guidance.

Objectives of the Enhanced Entry Risk Assessment Process

Enhanced entry risk assessment had three main objectives:

- To identify travelers who may have been exposed to Ebola, or be sick when they arrive in the United States,
- To ensure that these travelers were directed to appropriate care and monitoring, if needed, which would also help protect the health of all Americans, and
- To educate travelers and provide tools to help them monitor themselves for symptoms, and report to the local or state health department at their domestic destination(s) for active monitoring and health care if they developed symptoms.

Beginning October 2014, all travelers from Guinea, Sierra Leone and Liberia were required to undergo risk assessment for Ebola. Enhanced entry risk assessment was discontinued for countries after widespread transmission of Ebola had been halted. The last travelers from Guinea were screened in February 2016. Enhanced entry risk assessment at U.S. airports included processes (referred to operationally as "primary screening") to identify travelers from countries with Ebola outbreaks, either through scheduled flight itineraries or during customs and immigration inspections. CBP officers and other U.S. Department of Homeland Security staff collected contact and locating information, administered an exposure-and-symptom questionnaire, checked travelers' temperatures with noncontact thermometers, and observed travelers for signs of illness. Data were entered electronically through an online interface and transmitted securely to a CDC database and then to states. These processes were collectively referred to as "secondary screening." Travelers who were symptomatic or who reported possible exposures were referred to CDC for an in-depth public health risk assessment (referred to as "tertiary screening"). Symptomatic travelers who met predefined criteria were referred for medical evaluation to designated assessment hospitals, in consultation with the health department with jurisdiction for the airport. Travelers with certain types of higher risk exposures were not permitted to travel further by commercial transport even if they were not symptomatic.

HHS/CDC developed a new intervention called the CARE (Check and Report Ebola) Program to supplement the Ebola entry screening process. Airport-located CARE 'Ambassadors' that connected with travelers were trained health educators, counselors, or social workers. Each traveler arriving from West Africa was counseled by a CARE Ambassador and received a CARE Kit that included educational materials, a digital thermometer, and a pre-paid cell phone to help with daily reporting to state or local health departments.

Analysis of the Costs of Ebola Enhanced Entry Risk Assessment and Management Program

Every public health emergency is different, but HHS/CDC is confident that had the agency been able to answer 'who, where and how,' the government expenditures on Ebola entry risk assessment program would have been lower. In the absence of such data, HHS/CDC had to implement an expensive program in part just to help identify the small number of people within the United States that had been in countries with widespread Ebola transmission within the previous 21 days.

While some HHS/CDC and CBP personnel would still undoubtedly have been assigned to airports, some costs associated with travel time, training, and airport Ebola response work may have been avoided with the availability of better traveler contact data. More specifically, some examples cutting back on the domestic response might include:

- Reduction in travel of HHS/CDC employees assigned to airports. Each reassigned employee receives airfare, hotel, and per diem for incidentals such as meals.

- Reduction in overtime. Initially, staff at airports universally worked seven days a week, 12 to 16 hours a day, for 30 days at a time. At HHS/CDC headquarters, the Emergency Operations Center had persons answering calls 24–7, and many others working seven days to make travel arrangements, provide supplies, and answer press or congressional inquiries. Middle- and upper-level managers in more than one CDC center and division, as well as the HHS/CDC Director and staff, were on call 24–7.

- Reduction in supplies. The people reporting to airports needed personal protective gear, cellphones, laptops, and phones. At different points in time during the response, some airports needed to supply special contractors to remove used protective gear.

During the past fifteen years there have been several international disease events where this type of risk assessment was either considered by HHS/CDC or suggested by other branches of Federal government, *e.g.,* SARS, MERS, and multiple novel influenzas. However, this was the first instance in which such a program was implemented.

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Ebola Entry Risk Assessment Cost Estimates

First this section estimates the time-costs or opportunity costs to travelers from West Africa to comply with protocols at the ports of entry. Then HHS/CDC provides estimates of the budgetary costs to HHS/CDC and CBP for standing up the Ebola entry risk assessment program.

Screened-Traveler Opportunity and Out-of-Pocket Costs

The actual number of travelers who underwent the risk assessment program at airports between October 11, 2014 and February 18, 2016 is summarized in Table 42. These numbers were tabulated using electronic records kept by HHS/CDC of the number of West African travelers screened at U.S. airports.

Using the numbers of travelers screened, HHS/CDC estimates the opportunity costs for travelers. To represent the time involved in waiting for, and complying with, risk assessment for travelers, HHS/CDC assumes 30 minutes per traveler for secondary screening and an additional 30 minutes for travelers that had to undergo tertiary screening. Primary screening time was not included because all international travelers already interact with CBP in order to enter the United States.

Hospital evaluations would require an additional 24 hours. The cost to provide transportation to hospitals from airports and to conduct further evaluation was covered by travelers and/or their insurance providers or employers. Over the 16 month period of this program, a total of 29 travelers out of 38,344 screened (0.08%) were recommended to travel from the airport to a hospital for further testing. All travelers complied voluntarily and there was no need to issue a Federal order. HHS/CDC does not have any data to estimate the cost of transportation to and evaluation at hospitals. The cost to treat Ebola patients was reported to be about $30,000 per day at the Nebraska Medical Center and about $50,000 per day at the National Institutes of Health.[114] If the daily cost of evaluation is estimated to be similar to the cost of treating Ebola patients (*i.e.* $30,000—$50,000 per day) and it is assumed that evaluation requires 24–48 hours, a lower bound cost estimate for evaluation would be $30,000/day × 1 day = $30,000 and an upper bound cost estimate can be calculated from $50,000/day × 2 days = $100,000. The midpoint cost estimate is $65,000. For 29 patients at the midpoint cost estimate, the total cost is 29 patients × $65,000 per patient = $1,885,000.

During a one-year period from August 2013 through July 2014, approximately 90% of passengers from Liberia, Guinea, and Sierra Leone entered the United States at the five airports that CBP funneled all West African travelers for Ebola risk assessment. Therefore, HHS/CDC assumes that 10% of travelers designated for risk assessment had to change travel plans to comply with the funneling restrictions. This re-routing likely resulted in increased time spent in transit and some unplanned out-of-pocket expenditures for items such as rescheduled flights, layover delays or meals. In the absence of data to quantify these costs, HHS/CDC assumed that re-routing required an additional 6 hours of travel time and a $100 increase in costs for each traveler redirected from their original destination. This would apply to 10% of 38,344 (3,834) travelers over an 18-month period.

Traveler opportunity costs are valued at $23.23 per hour[115]/60 minutes to arrive at an estimate of $0.39 per minute using the 2015 U.S. average hourly wage reported by the Bureau of Labor Statistics. The total opportunity costs for travelers funneled to airports and participating in risk assessment is estimated to be $744,834 and the total out-of-pocket cost is estimated at $2.3 million (including the cost of evaluation at hospitals after referrals from airports. Thus, the total traveler cost is $3,146,596 (Table 42).

TABLE 42—TRAVELER OPPORTUNITY AND OUT-OF-POCKET COST ESTIMATES FOR EBOLA RISK ASSESSMENT (16 MONTHS), 2015 USD

	Number of travelers[a]	Time per traveler (min)	Time cost per traveler-hour[b]	Total opportunity cost	Out-of-pocket cost[c]	Total
2nd[d]	38,344	30	$23.23	$445,366	$0	$445,366
3rd[d]	2,736	30	23.23	32,867	0	32,867
Hosp.	29	1,440	23.23	25,471	1,885.000	1,910,471
Funnel	3,834	360	23.23	374,453	383,440	757,893
Total	38,344	NA	NA	744,834	2,268,440	3,146,596

[a] All travelers identified from countries with widespread Ebola transmission.

[b] Time cost is estimated by multiplying no. of minutes/60 by $23.23 (average hourly wages according to the 2015 Occupation and Employment Survey.

[c] Assumed $100 per travelers for 10% of travelers that are redirected.

[d] Secondary and Tertiary Screening

Federal Government Spending for Ebola Entry Risk Assessment

Current and projected spending for initiation and compliance with Ebola entry risk assessment is about $96M for HHS/CDC. All HHS/CDC funds have been either spent or are obligated in Fiscal Year (FY) 2016. CBP spending as of May 18, 2015 was $4.9 M. If this level of spending is extrapolated to 16 months of steady state spending, CBP costs would be $9.8 million. HHS/CDC does not have estimates of the costs to the other Federal or state agencies or airlines for time spent working in conjunction with HHS/CDC staff to develop the domestic response to Ebola.

Although Federal government spending occurred over 16 months, the monies were allocated and obligated within a single calendar year. Thus, the spending amounts are not discounted, but rather are treated as a one-time spending event. The total cost ($109 million) to the U.S. Federal government and to travelers is summarized in Table 43.

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TABLE 43—U.S. GOVT. AND TRAVELER COST ESTIMATES FOR EBOLA RISK ASSESSMENT (18 MONTHS), 2015 USD

Budget/cost category	Event cost
CDC Budget	$96,026,532
CBP Budget	9,830,583
Passenger Opportunity and Out-of-Pocket Cost	3,146,596
Total 16 Months	109,003,711

Analysis of the Benefits of Ebola Enhanced Entry Risk Assessment and Management

The benefits of the Ebola enhanced entry risk assessment and management program are much more difficult to quantify than the costs. This program was part of more than $5.4 billion spent on emergency Federal programs in the United States and abroad to contain the Ebola epidemic in West Africa to minimize the risk to the U.S. public.

The potential benefits from the enhanced entry risk assessment and management program include:

- Reduced time to health care evaluation/isolation for cases
- Treatment at appropriate facilities leads to better outcomes, reduced transmission risk
- Quarantine of persons at high risk to prevent transmission
- Reduction in effort by state/local health departments to conduct active monitoring due to increased engagement/communication tools (CARE program)

For the Ebola enhanced entry risk assessment and management program to be effective, there were a number of other activities conducted in parallel. Health departments had to effectively implement active monitoring and quarantine restrictions to respond to travelers who may become ill during the 21-day period in which travelers from Ebola-affected countries could become ill. Available evidence suggests that all states conducted active monitoring at least as stringently as the guidelines circulated by HHS/CDC. In fact, analysis of publicly available state guidelines determined that 17 states and the District of Columbia had policies that were more restrictive than HHS/CDC guidance, 35 states and territories had policies equivalent to HHS/CDC guidance, and no states or territories had guidance that was less restrictive than HHS/CDC guidance.[116] Travelers must comply with monitoring/quarantine and give accurate information during entry risk assessment. Treatment facilities must be able to appropriately evaluate and treat patients. Part of the Federal Ebola funding was used to identify and prepare hospitals to treat Ebola patients. Laboratory testing must be accessible, accurate, and timely to properly diagnose patients with communicable diseases not commonly seen in the United States.

The groups at greatest risk to contract Ebola, MERS, and SARS in non-endemic countries have been health care workers and patients in hospital settings.[117] This points to the importance of infection control processes at hospitals. However, the outcome from the first Ebola patient diagnosed with Ebola after arrival in the United States can be compared to the outcome of the second patient to demonstrate the utility of properly linking persons with potentially devastating communicable disease to treatment at a facility that has prepared to treat such patients. All of the other Ebola cases treated in the United States were diagnosed while the patients were in West Africa and are not included in this analysis.

The first incident case of Ebola in the United States among a traveler exposed in West Africa was diagnosed in a foreign national at a hospital in Dallas, Texas. At the initial presentation, the hospital did not suspect Ebola and did not test the patient before releasing him back into the community. As the patient's health continued to deteriorate, he returned to the same hospital and was then diagnosed with Ebola. Fortunately, there was no transmission to others in the community during the time between the initial and follow-up visits. During treatment, two health care workers at the hospital contracted Ebola, one of which flew on an interstate flight to and from Cleveland, Ohio. This single case led to 516 contacts who underwent active monitoring by health departments in six states. Among the 516 contacts, 147 were health care workers all of whom were exposed at the first hospital. All 147 health care workers had voluntary movement restrictions and 30 underwent voluntary home quarantine.[118][119] In addition, there were 101 persons exposed in the community and who were actively monitored in Texas and Ohio of which 41 had restricted movement and 9 underwent home quarantine.[120][121][122] Finally, there were 274 travelers exposed during interstate travel and actively monitored in 6 states. Of these, 20 travelers had movement restrictions.[123] In Texas and Ohio, 7 schools were closed for one day, and 2 students were asked not to go to school for 21 days after being on same flight as the infected health care worker.[124]

In contrast, the second incident case of Ebola among a traveler from West Africa in the United States occurred in New York City. However, the patient was a health care worker that volunteered in a treatment center in West Africa. Per CDC guidance, the patient had been self-monitoring his temperature and symptoms. The patient was quickly identified as at risk for Ebola and was transported to a hospital designated to be capable of accepting potential Ebola patients. This patient did not infect any healthcare workers and only 3 community contacts and zero health care workers had movement restrictions imposed.[125] There were no school closures in New York.

A comparison of estimated costs incurred for the first versus second incident cases of Ebola in the United States is presented in Tables 44 and 45. The opportunity costs for health care workers placed under movement restrictions are estimated based on average health care worker salary reported in the 2015 Occupational and Employment Statistics Survey ($37.40 per hour, code 29–0000) assuming that each employee is unable to work for a period of 3 weeks (15 work days). The costs to public health departments are estimated based on the average salary of epidemiologists ($36.97 per hour, code 19–1041) assuming that 50 epidemiologists spent a total of 30 days working on investigations for the three cases originating in Dallas. An overhead multiplier of 100% is used to estimate employee benefits and overhead costs.

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[120] Chevalier MS, Chung W, Smith J, et al. Ebola virus disease cluster in the United States—Dallas County, Texas, 2014. MMWR Morb Mortal Wkly Rep 2014;63:1087–8

[121] Chung WM, Smith JC, Weil LM, Hughes SM, Joyner SN, Hall EM, et al. Active Tracing and Monitoring of Contacts Associated With the First Cluster of Ebola in the United States. Ann Intern Med. 2015;163:164–73.

[122] Chung WM, Smith JC, Weil LM, Hughes SM, Joyner SN, Hall EM, et al. Active Tracing and Monitoring of Contacts Associated With the First Cluster of Ebola in the United States. Ann Intern Med. 2015;163:164–73.

[123] Regan JJ, Jungerman R, Montiel SH, et al. Public health response to commercial airline travel of a person with Ebola virus infection—United States, 2014. MMWR Morb Mortal Wkly Rep 2015;64:63–6.

[124] Bever L. Chain reaction: concern about Ebola nurse's flight prompts school closings in two states. The Washington Post. October 16, 2014. *https://www.washingtonpost.com/news/morning-mix/wp/2014/10/16/after-concern-about-ebola-patients-flight-schools-close-in-two-cities/.*

[125] Yacisin K, Balter S, Fine A, et al. Ebola virus disease in a humanitarian aid worker—New York City, October 2014. MMWR Morb Mortal Wkly Rep 2015;64:321–3.

Persons placed under movement restrictions are usually not permitted to go to public areas such as grocery stores and pharmacies. In addition, homeless contacts may need to be provided with temporary housing to facilitate active monitoring.[126] Some states posted police officers at specific addresses at an estimated cost of $1,000 per day.[127] The estimated average cost for the services required to monitor and sustain persons with restricted movement is estimated to be $500 per person-day for 21 days. In addition, 7 one-day school closures were reported. HHS/CDC does not have any data on school sizes and assumes that the average school size is 300 students and that opportunity costs of a one-day school closure can be estimated based on a parent or guardian losing one half-day of work (4 hours) for every student. Parent and guardian opportunity costs are estimated using the average wage rate in the United States ($23.23 per hour).[128] The cost to treat an Ebola patient has been reported to be about $650,000[129] at the Nebraska Medical Center and has been estimated to exceed $1 million.[130] HHS/CDC estimates the treatment cost to be the midpoint of these estimates $825,000 per case). It is not clear if this estimate includes the cost of waste disposal associated with Ebola treatment. The cost of waste disposal has been estimated to be as much as $100,000 per Ebola patient-day.[131] HHS/CDC assumes the cost of waste disposal is not included in the reported treatment costs and that waste disposal over a 10–20 period of treatment would add another $1 million to the cost of treatment. This results in an average cost of treatment and waste disposal of $1.825 million per patient.

TABLE 44—COSTS ASSOCIATED WITH FIRST INCIDENT EBOLA CASE IN TEXAS AND OHIO

Category	Number	Cost	Notes
Health care workers missing work	147	$659,736	Assume all persons with travel restriction missed time at work/productivity (21 days).
Community	41	114,292	
Air travelers	20	55,752	
Restricted movement support costs	208	2,184,000	Assume support costs for movement restrictions or home quarantine are 500 per person-day for 21 days.
Public health response	50 (assumed)	887,280	Assume 50 public health workers worked full time on response for 30 days.
School closure	7	195,132	7 schools for 1 day, assume 300 students each and one parent lost one half day of productivity per student.
Ebola treatment	3	5,475,000	Assume treatment cost = 1,825,000 per patient.
Total		9,571,192	

TABLE 45—COSTS ASSOCIATED WITH SECOND INCIDENT EBOLA CASE IN NEW YORK

Category	Number	Cost	Notes
Health care workers missing work	0	$0	Assume all persons with travel restriction missed time at work.
Community	3	8,363	
Air travelers	0	0	
Restricted movement support costs	3	31,500	Assume support costs for movement restrictions or home quarantine are 500 per person-day for 21 days.
Public health response	5	62,832	Assume 5 public health workers worked full time on response for 21 days.
School closure	0	0	
Ebola treatment	1	1,825,000	Assume treatment cost = 1,825,000.

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[126] Smith CL, Hughes SM, Karwowski MP, Chevalier MS, Hall E, Joyner SN, et al. Addressing Needs of Contacts of Ebola Patients During an Investigation of an Ebola Cluster in the United States—Dallas, Texas, 2014. Morbidity and Mortality Weekly Report (MMWR). 2015;64(5).

[127] West, M.G. The high cost of quarantine The Wall Street Journal. October 29, 2014. *http://www.wsj.com/articles/the-high-cost-of-quarantine-and-who-pays-for-it-1414546114*. Accessed June 13, 2016.

[128] *http://www.bls.gov/oes/current/oes_nat.htm*.

[129] Sun L.H. Cost to treat Ebola in the U.S.: $1.16 million for 2 patients. Washington Post November 18, 2014 *https://www.washingtonpost.com/news/post-nation/wp/2014/11/18/cost-to-treat-ebola-in-the-u-s-1–16-million-for-2-patients/?utm_term=.283370dc6c47*. Accessed 6/10/2016.

[130] Worstall T. The Free Market Won't Produce An Ebola Cure; So Should Government Instead? Forbes: August 8, 2014. *http://www.forbes.com/sites/timworstall/2014/08/08/the-free-market-wont-produce-an-ebola-cure-so-should-government-instead/#f8f45d46cac5*. Accessed June 13, 2016.

[131] LaMantia, J. Hospitals bleed money as they fight Ebola. Crain's New York Business. November 10, 2014. *http://www.crainsnewyork.com/article/20141110/HEALTH_CARE/141119994/hospitals-bleed-money-as-they-fight-ebola*. Accessed June 14, 2016.

TABLE 45—COSTS ASSOCIATED WITH SECOND INCIDENT EBOLA CASE IN NEW YORK—Continued

Category	Number	Cost	Notes
Total		1,927,695	

The difference ($7.7 million) in total estimated costs associated with the first incident case in a traveler from West Africa ($9.6 million) and the second incident case ($1.9 million) show the potential benefits associated with the Federal, state and local activities implemented to link patients to appropriate care to mitigate the transmission risk. HHS/CDC does not have any more data with which to estimate the costs associated with incident Ebola cases in the United States and solicits public comment to improve the above cost estimates.

At the time the Ebola enhanced entry risk assessment and management program was put in place, HHS/CDC could not accurately estimate the expected number of travelers from West Africa that would become sick with Ebola after arrival in the United States. In retrospect, efforts to contain the transmission of Ebola from countries with widespread transmission were very effective at limiting risk. Among all 300,000 travelers departing countries with widespread transmission via commercial airlines, only four Ebola cases were reported, none of which were symptomatic during travel. Although less than 20% of such travelers were destined for the United States, two of the four cases occurred in the United States.

Public Willingness To Pay for Ebola Prevention Measures

HHS/CDC was unable to conduct a willingness to pay survey to assess the U.S. public's willingness to expend Federal resources to minimize Ebola risks. However, survey evidence suggests that the public would probably be willing to pay some amount to reduce risk from Ebola to as close to zero as possible. Soon after Ebola was transmitted to two health care workers in the U.S., a poll showed that Americas felt Ebola was an urgent health problem for the entire country. Among a list of health care issues facing the country, only health care costs and access to care ranked higher than Ebola in the public's mind. In comparison, both heart disease and cancer were ranked below Ebola despite a significantly greater probability that any individual would suffer from these conditions than contract Ebola.[132]

Public opinion related to disease outbreaks can influence policy leader attitudes related to the response of the outbreak—potentially redirecting the focus of activities and public funding to areas of limited public benefit. In a review of over 175 public opinion polls in 2014, researchers highlighted several reasons for this public perception.

Survey respondents did not understand or trust information provided regarding the mode of transmission and therefore they felt particularly vulnerable. About 45% were either somewhat worried or very worried that they or someone in their family could become sick with Ebola. The media also played a role in increasing the public's concern—three major news networks aired approximately 1000 Ebola-related segments between mid-October to early November, 2014. According to the survey, public trust in scientists and government was at an all-time low.[133]

Considering that the U.S. population as a whole (319 million), an average willingness to pay per person of $17 would be sufficient to justify the entire $5.4 billion Federal Ebola response. This amount would cover the costs of Federal government activities to reduce Ebola transmission in affected countries, to support exit screening at international airports, research programs for Ebola vaccines and medicines, to implement domestic programs to identify and prepare U.S. hospitals and laboratories for Ebola testing and treatment, to implement the Ebola enhanced entry risk assessment and management program at U.S. airports, and to provide Federal support for active monitoring activities in U.S. states. The $5.4 billion budget allocation included $1.147 billion for domestic Ebola response activities (other than research and development) including the $96 million for the Ebola enhanced entry risk assessment and management program. Thus, if international, research, and development activities are excluded, U.S. public willingness to pay would have to be greater than $3.65 per person for all domestic activities or $0.34 for just the enhanced entry risk assessment and management program. HHS/CDC would like to solicit public comment on willingness to pay to reduce Ebola risk in the United States to near zero if another outbreak of Ebola occurs in the future.

Potential for Disease Transmission in the United States

HHS/CDC believes that the risk of significant transmission of Ebola in the United States is low and that Federal, state, and local public health interventions reduced such risks to almost effectively zero. However, as discussed above, outbreaks of new diseases can lead to significant costs if disease-related anxiety leads to reduced productivity. Thanks in part to vigorous Federal responses to communicable disease threats, the United States has never experienced a time-limited introduction of a new communicable disease with significant transmission. This analysis would not apply to a communicable disease threat like the novel H1N1 influenza pandemic that would infect a significant number of U.S. citizen regardless of HHS/CDC efforts. However, other relatively high income countries have had to deal with very costly outbreaks of SARS and MERS.

The 2003 SARS outbreak was initiated in Guandong, China in late 2002 and led to the exportation of cases to multiple countries, including Australia, Canada, Hong Kong, Singapore and the United States. Significant transmission occurred in Hong Kong, Canada, and Singapore. The introduction of SARS led to reductions in the number of people traveling to these countries. Survey respondents indicated that they were less likely to engage in activities such as eating at restaurants or going to shopping malls. Forecasted Gross Domestic Product (GDP) in 2003 decreased by 3.7 billion US dollars in Hong Kong, 3.2–6.4 billion US dollars in Canada, and 4.9 billion US dollars in Singapore due to the SARS outbreak.[134] In Canada and Singapore, GDP growth was estimated to decrease by 1% for the year 2003. In the second quarter of 2003, GDP growth in China and Hong Kong was estimated to have decreased by 3% and 4.75%, respectively.[135] The estimated losses to the tourism industry alone in Beijing, China was around 1.4 billion US dollars.[136]

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[132] SteelFisher GK, Blendon RJ, Lasala-Blanco N. Ebola in the United States—Public Reactions and Implications. N Eng J Med. 2015;373:789–91.

[133] SteelFisher GK, Blendon RJ, Lasala-Blanco N. Ebola in the United States — Public Reactions and Implications. N Eng J Med. 2015;373:789–91.

[134] Keogh-Brown M.R. and Smith R.D., The economic impact of SARS: How does the reality match the predictions? Health Policy. 2008; 88: 110–120.

The MERS outbreak in South Korea started with a case in an international traveler returning from the Middle East at the end of May 2015 and ended with the official announcement of the World Health Organization in December 2015. A total of 186 laboratory-confirmed infections, including 38 deaths, was reported, and more than 16,000 people kept in-house quarantine.[137] This outbreak represents an infectious disease outbreak associated with international travel in a high income country. Since this outbreak recently occurred in 2015, it may provide a useful extrapolation of what might happen if HHS/CDC does not act swiftly to contain a quarantinable communicable disease threat.

HHS/CDC assumes an outbreak similar in magnitude to the Korean MERS outbreak is more likely to happen in the United States if HHS/CDC were to stop enforcing its quarantine and isolation authorities, stop conducting contact investigations among travelers exposed to quarantinable communicable diseases, and if it were unable to implement enhanced entry risk assessment and management programs if warranted by a quarantinable communicable disease outbreak in another country. HHS/CDC cannot quantify the change in risk to the United States that would result, but believes the Korean MERS outbreak is a useful example of the unpredictable course of quarantinable communicable disease outbreaks in the United States.

HHS/CDC estimates that all patients would be hospitalized resulting in treatment costs of around $2.9 million inpatient based on 186 laboratory-confirmed infections and ten days of hospitalization per case. HHS/CDC assumes that the inpatient cost is $1,542 per day based on the costs of treating multidrug resistant tuberculosis in the United States (Table 46).[138]

TABLE 46—COST OF HOSPITALIZATION MERS OUTBREAK EXAMPLE, 2015 USD

Number of people who are infected	Daily inpatient costs	Median duration of hospitalization	Cost of hospitalization
(A) [a]	(B) [b]	(C) [a]	(A × B × C)
186	$1,542	10	$2,868,843

[a] Korea Centers for Disease Control and Prevention. Middle East Respiratory Syndrome Coronavirus Outbreak in the Republic of Korea, 2015. Osong Public Health Research Perspective. 2015;6(4):269–78.

[b] Marks S.M., Flood J., Seaworth, B., et al. Treatment practices, outcomes, and costs of multidrug-resistant and extensively drug-resistant tuberculosis, United States, 2005–2007. Emerging Infectious Disease. 2014; 20(5):812–820.

The costs associated with excess mortality of the outbreak are estimated at $357.2 million based on the 38 reported MERS-associated deaths reported and a $9.4 million estimate for the value of a value of statistical life. Using a range of $4.3 million to $14.2 million for the value of statistical life, the cost of MERS-associated deaths can be estimated at $163—$540 million (Table 47).

TABLE 47—MORTALITY COST, MERS OUTBREAK EXAMPLE, 2015 USD

	Best estimate	Lower bound	Upper bound	References
Number of deaths (A)	38	38	38	Korea CDC 2015.[a]
Value of statistical life (B)	$9.4 million	$4.3 million	$14.20 million	Value of statistical life.
Mortality cost (A × B)	$357.2 million	$163.4 million	$539.6 million	N/A.

[a] Korea Centers for Disease Control and Prevention. Middle East Respiratory Syndrome Coronavirus Outbreak in the Republic of Korea, 2015. Osong Public Health Research Perspective. 2015;6(4):269–78.

To arrest the progress of the Korean MERS outbreak as quickly as possible, at least 16,000 people underwent in-house quarantine in South Korea.[139] HHS/CDC assumes that state and local public health departments may implement similar measures if faced with a large outbreak of a newly-introduced quarantinable communicable disease in the United States. The South Korean government recommended 14 days of in-house quarantine based on the incubation period of MERS coronavirus and HHS/CDC assumes that state and local health departments in the United States would implement similar measures. The average wage reported in the Bureau of Labor Statistics, May 2015 Occupational Employment Statistics is $23.23 per hour.[140] Assuming the productivity losses associated with in-home quarantine can be estimated based on the average hourly wage, HHS/CDC estimates the productivity losses at $41.6 million (Table 48).

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[135] Keogh-Brown M.R. and Smith R.D., The economic impact of SARS: How does the reality match the predictions? Health Policy. 2008; 88: 110–120.

[136] Beutels P., Jia N, Zhou Q., et al., The economic impact of SARS in Beijing, China. Tropical Medicine and International Health, 2009, 12 Suppl 1: 85–91.

[137] Korea Centers for Disease Control and Prevention. Middle East Respiratory Syndrome Coronavirus Outbreak in the Republic of Korea, 2015. Osong Public Health Research Perspective. 2015;6(4):269–78.

[138] Marks S.M., Flood J., Seaworth, B., et al. Treatment practices, outcomes, and costs of multidrug-resistant and extensively drug-resistant tuberculosis, United States, 2005–2007. Emerging Infectious Disease. 2014; 20(5):812–820.

[139] Korea Centers for Disease Control and Prevention. Middle East Respiratory Syndrome Coronavirus Outbreak in the Republic of Korea, 2015. Osong Public Health Research Perspective. 2015;6(4):269–78.

[140] Bureau of Labor Statistics (*http://www.bls.gov/oes/current/oes_nat.htm*.

TABLE 48—COST OF QUARANTINE, 2015 USD

Description	N	Reference
Number of people who undergo house quarantine (A)	16,000	Korea CDC 2015.[a]
Number of days undergo house quarantine per person (B)	14	Korea CDC 2015.[a]
Working hours per day (C)	8	Assumption.
Hourly labor cost (D)	$23.23	Bureau of Labor Statistics.[b]
Cost of quarantine (A × B × C × D)	$41,628,320	N/A.

[a] Korea Centers for Disease Control and Prevention. Middle East Respiratory Syndrome Coronavirus Outbreak in the Republic of Korea, 2015. Osong Public Health Research Perspective. 2015;6(4):269–78.

[b] Bureau of Labor Statistics (http://www.bls.gov/oes/current/oes_nat.htm.)

As of June 10th 2015, a reported 918,000 students, under 19 years of age, were affected by school closure due to the MERS outbreak in South Korea.[141] HHS/CDC cannot predict whether an outbreak with a magnitude similar to the MERS outbreak in South Korea would lead to significant school closures in the United States, but notes that school closures occurred in the United States after the initial Ebola cases in the United States were diagnosed.

During the 2009 H1N1 pandemic in the United States, HHS/CDC initially recommended dismissal of students for at least seven days[142] after the diagnosis of an H1N1 case in a student. Later, HHS/CDC revised the recommendation and school closing was no longer recommended.[143] For the H1N1 outbreak, around 17% of households reported lost work time because of school closure in New York City.[144] In the absence of better data, HHS/CDC assumes schools would be closed for an average of seven days and that each closed school day results in 0.17 missed workdays for a parent. HHS/CDC estimates the productivity loss of parents due to school closure at $203 million (Table 49).

TABLE 49—COST OF SCHOOL CLOSURE, 2015 USD

Description	N	Reference
Number of students under 18 years old who were affected by school closure (A)	918,000	KERI Insight 2015.[a]
School closure days (B)	7	Assumption.
Number of loss days of parents per children (C)	0.17	Borse et al. 2011.[b]
Working hours per day (D)	8	Assumption.
Hourly labor cost (E)	$23.23	Bureau of Labor Statistics.[c]
Cost of quarantine (A × B × C × D × E)	$203,015,033	N/A.

[a] Cho K.Y., Yoo J.S. Forecasting Economic loss associated with MERS outbreak in South Korea, 2015. KERI Insight. 15–20.

[b] Borse H.R., Behravesh C.B., Dumanovsky T. et al., Closing schools in response to the 2009 pandemic influenza A H1N1 virus in New York City: Economic impact on households. Clinical Infectious Disease: 2011; 52 (Supple 1) S168–S172.

[c] Bureau of Labor Statistics (http://www.bls.gov/oes/current/oes_nat.htm).

In addition to the measurable impacts directly tied to the MERS outbreak. South Korea experience a significant decrease in the number of foreign travelers. The outbreak started in May 2015, but the biggest impacts were observed from June to August when the number of travelers decreased by 26.5% to 53.5% relative to 2014 (Table 50).[145] As the outbreak subsided, the number of travelers returned to previous trends. By September 2015, South Korea only received 10% fewer travelers compared to September 2014. HHS/CDC examined travel data to Dallas in October 2014 (corresponding to the time period in which three Ebola cases were reported), but found no significant difference relative to October 2013. This indicates that the Ebola cases in the United States were not as disruptive as the MERS outbreak cases in South Korea.

TABLE 50—NUMBER OF FOREIGN TRAVELERS WHO VISITED SOUTH KOREA DURING THE MERS OUTBREAK (2014 VERSUS 2015, 1,000 TRAVELERS)[146]

	2014	2015	Change (%)
June	1,274	751	−41.0
July	1,355	630	−53.5
August	1,454	1,069	−26.5

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[141] Cho K.Y., Yoo J.S. Forecasting Economic loss associated with MERS outbreak in South Korea, 2015. KERI Insight. 15–20.

[142] Cauchemez S., Van Kerkhove M.D., Archer B.N. et al. School closures during the 2009 influenza pandemic: national and local experiences. BMC Infectious Disease. 2014; 14: 207.

[143] Cauchemez S., Van Kerkhove M.D., Archer B.N. et al. School closures during the 2009 influenza pandemic: national and local experiences. BMC Infectious Disease. 2014; 14: 207.

[144] Borse H.R., Behravesh C.B., Dumanovsky T. et al., Closing schools in response to the 2009 pandemic influenza A H1N1 virus in New York City: Economic impact on households. Clinical Infectious Disease: 2011; 52 (Supple 1) S168–S172.

[145] Trends of foreign travelers, South Korean international travelers, tourism income, and tourism expenditure in December 2015, Korea Tourism Organization.

[146] Trends of foreign travelers, South Korean international travelers, tourism income, and tourism expenditure in December 2015, Korea Tourism Organization.

Given all of the above information, South Korean economic modelers attempted to estimate the impact of the MERS outbreak on South Korean GDP in 2015 and estimated that the MERS outbreak alone reduced GDP by 0.26%.[147] If a similar size outbreak occurs in the United States and results in a 0.26% loss to GDP, the economic cost could be extrapolated to be 0.0026 × $17.95 trillion[148] = $41.3 billion.

Summary Ebola Enhanced Entry Risk Assessment and Management Program

The above summary demonstrates the types of analyses that HHS/CDC would undergo when deciding to implement enhanced entry risk assessment and management programs in the future. HHS/CDC will weigh the costs of such programs, the public willingness to accept risks associated with incident cases of quarantinable communicable diseases, the ability of enhanced entry risk assessment and management programs to reduce such risks, and the economic costs of a significant outbreak of a newly-introduced quarantinable communicable disease in the United States. HHS/CDC cannot easily assess how the U.S. public will respond to communicable disease threats and how anxiety associated with communicable disease threats may impact the broader economy.

At the time the Ebola risk assessment program was implemented, HHS/CDC had already been supporting the implementation of exit screening in countries with widespread Ebola transmission for two months. HHS/CDC began support efforts after an ill traveler flew on a commercial flight and introduced Ebola to Nigeria in July 2014. The exit screening efforts in countries with widespread transmission may have resulted in a significant reduction in the number of exported Ebola cases. Only four cases of Ebola (among approximately 300,000 travelers from August 2014) were exported by countries with widespread transmission after the implementation of exit screening and none of these Ebola patients were symptomatic during commercial travel. This can be compared to estimates of 2.8 infected travelers departing Liberia, Sierra Leone, and Guinea each month in the absence of an exit screening program.[149]

The willingness and ability of affected countries to implement effective exit screening will also be considered by HHS/CDC when deciding whether to implement an enhanced entry risk assessment and management program in the future. It will always be a challenge to weigh the costs of public health interventions to the benefits of avoiding a large outbreak of a newly-introduced quarantinable communicable disease. However, HHS/CDC intends to use available evidence such as that summarized above when making decisions.

More Restrictive Alternative: Suspension of Entry during Period West Africa Ebola Outbreak

The more restrictive alternative relative to the NPRM would be for the United States to temporarily suspend the entry of travelers into the United States in the event of widespread transmission of quarantinable communicable diseases. A number of U.S. politicians advocated for this response to the 2014–16 Ebola outbreak in Liberia, Sierra Leone, and Guinea.[150] Some states actively discouraged persons from visiting their states including one example in which prospective participants at a large tropical medicine scientific conference were advised not to travel to a particular state to attend the conference if they had been in one of the countries with widespread transmission within the previous 21 days.[151] The costs and benefits of this alternative are difficult to weigh. Presumably, the costs incurred to implement the Ebola Enhanced entry risk assessment and management program would not have been incurred representing a potential savings (avoided costs) of about $109 million (Table 46). In addition, state and local health departments would not have incurred costs associated with active monitoring of individuals arriving from Ebola-affected countries for a period of 21 days. HHS/CDC does not have any data to estimate these costs, but the costs were probably at least twice the costs for HHS/CDC to implement the Ebola Enhanced entry risk assessment and management program. The costs of state-level active monitoring are estimated as a range from 2 to 4 times the cost of the Ebola enhanced entry risk assessment and management program. The benefits ($327 to $545 million) for the more restrictive alternative are summarized in Table 51.

TABLE 51—BENEFITS OF MORE RESTRICTIVE ALTERNATIVE

[Suspension of entry]

	Best estimate	Lower bound	Upper bound
Ebola Enhanced entry risk assessment and management program	$109,003,711	$109,003,711	$109,003,711
Avoided cost of state-level active monitoring	327,011,133	218,007,422	436,014,844
Total benefits	436,014,844	327,011,133	545,018,555

Effect on Ebola Risk in the United States

HHS/CDC cannot fully quantify the impact of a travel suspension on the risk of incident Ebola cases in the United States. Modeling studies suggest that travel restrictions would likely have only delayed, but not prevented the spread of Ebola to new countries.[152]

The implementation of travel suspensions would have delayed efforts to stop the outbreak in West Africa by requiring all U.S. volunteers as well as Federal employees to spend 21 days in a designated safe facility or other location outside the United States after working in countries with widespread Ebola transmission. This would surely have dis-incentivized participation in the response. In addition, HHS/CDC cannot predict whether other countries would have followed the U.S. lead in suspending travel. However, HHS/CDC believes that travel suspensions would have delayed outbreak response efforts and may have been more likely to lead to additional spread of Ebola especially to neighboring countries in Africa.

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[147] Cho, K., Yoo, J., Forecasted economic losses due to MERS outbreak in South Korea, KERI Insight.

[148] U.S. Central Intelligence Agency. The World Factbook. United States Economy. *https://www.cia.gov/library/publications/the-world-factbook/geos/us.html.* Accessed June 13, 2016.

[149] Bogoch II, Creatore MI, Cetron MS, Brownstein JS, Pesik N, Miniota J, et al. Assessment of the potential for international dissemination of Ebola virus via commercial air travel during the 2014 west African outbreak. Lancet. 2015;385:29–35.

[150] McAuliff M. Lawmakers ignore experts, push for Ebola travel ban. The Huffington Post. October 16, 2014. *http://www.huffingtonpost.com/2014/10/16/congress-ebola_n_5997214.html.*

[151] Olliaro P, Lasry E, Tiffany A. Out of (West) Africa—Who Lost in the End? Am J Trop Med Hyg 2015 Feb 4; 92(2): 242–243. 2015;92(2):242–3.

[152] Poletto C, Gomes M, Pastore y Piontti A, Rossi L, Bioglio L, Chao D, et al. Assessing the impact of travel restrictions on international spread of the 2014 West African Ebola epidemic. Euro Surveill. 2014;19(42):pii: 20936.

Under this alternative, traveler opportunity costs would be much greater because any travelers to countries with widespread Ebola transmission would no longer be allowed to enter the United States for a period of 21 days. If there is no decline in travelers, each traveler loses approximately 21 days of productivity as a result of the suspension, traveler opportunity costs can be estimated by 38,334 travelers × 8 hours per day × 21 days × $23.23 (average U.S. wage rate) = $150 million. These costs alone could more than offset the cost of Ebola Enhanced entry risk assessment and management program. The cost for those travelers to spend an additional 21 days at a secure location would probably be similar to the opportunity cost estimate from above or more depending of operating a designated safe facility or the cost of staying at another location outside the United States.

However, this simplistic analysis probably does not accurately reflect the implications of a travel suspension. Suspension of entry would probably significantly reduce the number of U.S. volunteers willing to travel to West Africa to mitigate the Ebola outbreak closer to its sources. This would delay the progress made in suppressing the outbreak and increase risk of exportation to other countries. HHS/CDC cannot predict how other countries may have responded to the U.S. decision to suspend entry. If other countries implemented similar restrictions, there may have been a chain of reaction leading to a significant decrease in the number of global volunteers to the most affected countries. In this scenario, the 2014–16 Ebola outbreak in West Africa would have almost certainly persisted for a much longer period of time. HHS/CDC cannot estimate the long term impact for the affected countries, the West African region, or the costs to the U.S. government or its people.

While HHS/CDC is not able to estimate a dollar value of diminished trade in general, the estimated trade volumes prior to the outbreak are available and summarized in Table 52. The total annual value of trade for the three Ebola-affected countries in West Africa is $574 million and ranges from $125 million with Sierra Leone to $270 million with Liberia.[153]

TABLE 52—SUMMARY OF U.S. TRADE WITH GUINEA, LIBERIA, SIERRA LEONE, AND CHINA [a]

Country	Trading partner rank	Value U.S. exports to country	Description of U.S. exports	Value of U.S. imports to country	Description of U.S. Imports	Total value imports + exports
Guinea	153	$80M	Vehicles, machinery	$99M	Metals and precious stones.	$179M
Liberia	142	173M	Machinery, iron/steel, vehicles.	97M	Rubber, salt/sulfur, precious stones.	270M
Sierra Leone	162	83M	Machinery, vehicles, meat.	42M	Ores, metals, precious stones.	125M

[a] Data extracted from the U.S. Office of the Trade Representative [154]

It is likely that U.S. economic losses would be much less than the numbers reported in Table 53 because U.S.-based importers and exporters would still be able to import or export some goods or services while the temporary travel delay remains in place. There may also be some substitution of countries by U.S. firms, for example if a particular good is made or grown in more than one country, U.S. firms might shift their purchasing away from one trade partner to the other. However, once purchasing is shifted there may be future difficulties once the suspension of entry is lifted if there are negative political consequences.

In the absence of data HHS/CDC assumes that the cost of lost trade for a one-year period can be estimated by a range of 0.1%, 1%, or 10% of lost trade (minimal to maximum, Table 53). Generally, the losses in the three countries with widespread Ebola transmission are estimated to range from about $0.55 million to $55 million.

TABLE 53—HYPOTHETICAL TRADE LOSSES DUE TO A TRAVEL DELAY

Country	Total value imports + exports	Assumed financial losses to U.S. stakeholders as % of total trade		
		10%	1%	0.10%
Guinea	$179M	$17.9M	$1.79M	$0.179M
Liberia	270M	27.0M	2.70M	0.270M
Sierra Leone	125M	12.5M	1.25M	0.125M
Subtotal	574M	57.4M	5.74M	0.547M

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[153] *https://ustr.gov/countries-regions/africa/west-africa/liberia*; *https://ustr.gov/countries-regions/africa/west-africa/guinea*; *https://ustr.gov/countries-regions/africa/west-africa/sierra-leone* Accessed June 13, 2016.

[154] *https://ustr.gov/countries-regions/africa/west-africa/liberia*; *https://ustr.gov/countries-regions/africa/west-africa/guinea*; *https://ustr.gov/countries-regions/africa/west-africa/sierra-leone* Accessed June 13, 2016.

TABLE 54—QUANTIFIED COSTS OF MORE RESTRICTIVE ALTERNATIVE (SUSPENSION OF ENTRY)

	Best estimate	Lower bound	Upper bound
Opportunity costs to travelers	$149,643,000	[a] $74,821,500	$149,643,000
Lodging costs for 21 days outside the United States or at a designated safe facility [b]	149,643,000	74,821,500	149,643,000
Trade costs	5,470,000	547,000	55,470,000
Total quantified costs	304,756,000	150,190,000	354,756,000

[a] This lower bound assumes that half of the travelers decided not to go to West Africa.

[b] The estimated lodging costs are assumed to be similar in magnitude to the opportunity costs.

Comparing the costs in Table 51 and benefits in Table 54, the most easily quantified benefits may be greater than the most easily quantified costs. However, given the potential other costs associated with prolonging the length of the Ebola outbreak in West Africa, the potential for other countries to implement travel restrictions after the United States, and the potential that delayed cessation of the Ebola outbreak could have led to serious political and economic outcomes in West Africa, HHS/CDC believes that the suspension of entry would have been a poor alternative to the implementation of the Ebola Enhanced entry risk assessment and management program to reduce the risk of Ebola transmission in the United States. Suspension of entry could enhance the United States future vulnerability to communicable disease threats if other countries would have observed this suspension of entry and tried to conceal communicable disease outbreaks within their borders. This potentially reduced ability to address future communicable disease threats in combination with the realization that only two Ebola cases associated with international commercial travel occurred in the United States under the status quo, HHS/CDC believes that implementation of travel suspensions will lead to more costs than benefits relative to the status quo. However, HHS/CDC cannot quantify all of the costs and benefits of travel suspensions. HHS/CDC solicits public comment about the costs and benefits of a suspending entry as an alternative to HHS/CDC's decision to implement the Ebola Entry Risk Assessment program.

Payment for Care and Treatment (Proposed 42 CFR 70.13/71.30)

The revisions to 42 CFR 70.13/71.30: Payment for Care and Treatment are not expected to lead to a change in HHS/CDC policy under which HHS/CDC may act as the payer of last resort for individuals subject to medical examination, quarantine, isolation, and conditional release under Federal orders. The primary benefit of codification is increased transparency around HHS/CDC policies to assist in paying for treatment for individuals under Federal orders.

The provisions included in the NPRM are similar to a Memorandum of Agreement between a number of hospitals and HHS/CDC. Under the terms of the Memorandum of Agreement, the hospital can be reimbursed for incurred medical expenses subject to HHS/CDC's discretion, availability of appropriations, and limited to what a hospital would bill Medicare. The Memorandum of Agreement also indicates that HHS/CDC should be the payer of last resort.

HHS/CDC issued 12 isolation orders between Jan. 1, 2005 and May 10, 2016, which would correspond to an average of about 1 order per year over the past 11.3 years. HHS/CDC has information on payments made for 3 of the 12 cases. In most cases, HHS/CDC makes payment directly to healthcare facilities, sometimes in lieu of payments that would be made by state or local health departments. Among the three instances for which HHS/CDC has some data on payments for treatment, care, and transportation of individuals under Federal orders:

- In one case, HHS/CDC paid $7,000 for a patient's care after splitting the cost with a local health department.
- In a second case, HHS/CDC paid over $200,000 of the treatment costs.
- In a third case, HHS/CDC paid healthcare facilities directly for treatment and transport of an individual who had been paroled into the United States. In this situation, HHS/CDC paid approximately $80,000 for this patient's transport and treatment.

HHS/CDC could not confirm whether it paid for treatment for any of the 9 other individuals under Federal orders in the previous 11.3 years. It is possible that HHS/CDC did help pay for treatment for some of these individuals. HHS/CDC's expected annual payments for care and treatment are estimated to be between 0 and $1,000,000 in any given year under the current baseline. This upper bound cost would correspond to a year in which HHS/CDC would have to incur the costs of two patients at $500,000 per patient. This roughly corresponds to the average cost to treat an extremely drug-resistant tuberculosis case (XDR–TB).[155] Alternatively, this could represent a situation in which HHS/CDC may have to pay a significant fraction of the total costs for one very complicated illness associated with a quarantinable communicable disease not endemic to the United States (*e.g.*, Ebola).

To estimate the average annual payments for care and treatment by HHS/CDC, the average payment for the three cases with known payment information can be assumed to be incurred annually (corresponding to the average number of isolation orders that HHS/CDC issues each year). In this case, the average annual cost to the Federal government would be ($7,000 + $80,000 + $200,000)/3 years = ~$96,000 per year. If instead HHS/CDC assumes zero payments by CDC for the other nine cases for which it is unclear whether or not CDC paid any amount, the average annual cost would be ($7,000 + $80,000 + $200,000)/12 years = ~$24,000 per year. HHS/CDC can estimate with some certainty that the current annual average costs to the Federal government are probably somewhere in the range of $24,000 to $100,000 and not likely to exceed $1,000,000 in any one year.

HHS/CDC has not incurred any costs for the care and treatment of any individuals besides for those under Federal isolation orders.

When HHS/CDC assumes responsibility to pay for treatment as the payer of last resort, another entity, typically a healthcare facility or state/local health department, would incur a benefit exactly equal to the amount of the HHS/CDC payment. This is referred to as a transfer payment, because from the perspective of the U.S. economy, there is zero net cost or benefit, simply a transfer from the Federal government to another entity.

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[155] Marks SM, Flood J, Seaworth B, Hirsch-Moverman Y, Armstrong L, Mase S, et al. Treatment Practices, Outcomes, and Costs of Multidrug-Resistant and Extensively Drug-Resistant Tuberculosis, United States, 2005–2007. Emerging Infectious Diseases. 2014;20(5):812–20.

The codification of 42 CFR 70.13 and 42 CFR 71.30 is not expected to change HHS/CDC's policy to continue to act as the payer of last resort. However, it may be possible that in the absence of codification, a precedent-setting event may occur in which HHS/CDC must take on additional responsibility to pay for the care and treatment of individuals under Federal orders. HHS/CDC's best estimate (and lower bound) of the impact of the changes to 42 CFR 70.13 and 42 CFR 71.30 is zero net cost or benefit to HHS/CDC or to healthcare facilities. The upper bound estimate corresponds to a 50% increase in HHS/CDC's average cost estimate for payments for care and treatment (50% × $96,000 = $48,000). In this case, without the NPRM, HHS/CDC could incur additional costs of up to $48,000 per year. If HHS/CDC is incurring additional costs, healthcare facilities would receive a corresponding benefit in receiving payments from HHS/CDC. Thus, without the NPRM, healthcare facilities may receive up to an average $48,000 in additional payments from HHS/CDC for the care and treatment of individuals under Federal orders. Thus, with the NPRM, an upper bound estimate of benefits to HHS/CDC would be $48,000 from the implementation of the NPRM. The corresponding upper bound estimate of costs to healthcare facilities associated with implementation of the NPRM would be $48,000. An extreme upper bound economic impact of the NPRM for any one year would be a benefit to HHS/CDC of avoided payments equal to $500,000 and a corresponding cost to healthcare facilities of $500,000 representing losses associated with treatment costs incurred for one additional XDR–TB case[156] (Table 55). XDR–TB is very expensive to treat, because it can take up to two years to resolve. This amount would be similar to the cost to treat one Ebola case. The cost to treat an Ebola patient has been reported to be about $650,000[157] at the Nebraska Medical Center and has been estimated to exceed $1 million[158] if the cost of Ebola waste disposal is not included. However, because of the severity of Ebola, it is unlikely than an Ebola patient would have to be placed under a Federal order to seek treatment. MERS or SARS are examples of other diseases for which it is possible that patients may be placed under Federal orders; however, the costs of treating these diseases are expected to be considerably less than for XDR–TB or Ebola.

HHS/CDC specifically solicits public comment on cost estimates associated with changes to 42 CFR 70.13/71.30: Payment for care and treatment.

TABLE 55—ESTIMATED MARGINAL COSTS AND BENEFITS ASSOCIATED WITH CHANGES TO 42 CFR 70.13/71.30: PAYMENT FOR CARE AND TREATMENT

		Marginal benefit to HHS/CDC resulting from NPRM	Marginal cost to U.S. individuals or healthcare facilities resulting from NPRM	Net cost/ benefit
NPRM	Best estimate	$0	$0	$0
	Lower bound	0	0	0
	Upper bound	48,000	48,000	0
	Extreme upper bound	500,000	500,000	0
Less Restrictive Alternative (Cost estimate to pay for all Travelers sent to hospitals for evaluation during a potential enhanced entry risk assessment and management program).	Best estimate	(1,885,000)	1,885,000	0
	Lower bound	(471,250)	471,250	0
	Upper bound	(9,425,000)	9,425,000	0
More Restrictive Alternative (HHS/CDC never pays for care or treatment for persons under Federal orders).	Best estimate	48,000	48,000	0
	Lower bound	24,000	24,000	0
	Upper bound	96,000	96,000	0

HHS/CDC examines two alternatives to codification of its current policy that individuals under Federal orders will utilize third party resources first. Under the first, less restrictive alternative, HHS/CDC would pay for individuals to be tested at hospitals if referred from an enhanced entry risk assessment and management program at airports in the future (*i.e.*, similar to the 2014–16 Ebola enhanced risk assessment program). Under the more restrictive alternative HHS/CDC would never offer to pay for treatment and care.

Besides the NPRM analysis included in Table 55, the Federal burden to pay for care and treatment may have included persons sent to hospitals from airports for further evaluation during the Federal government's Ebola enhanced entry risk assessment and management program. Over the 16 month period of this program, a total of 29 travelers out of 38,344 screened (0.08%) were recommended for transport from the airport to a hospital for further testing. All travelers complied voluntarily and Federal orders were not issued. HHS/CDC does not have any data to estimate the cost of transportation to and evaluation at hospitals. The cost to treat Ebola patients was reported to be about $30,000 per day at the Nebraska Medical Center and about $50,000 per day at the National Institutes of Health.[159] If the daily cost of evaluation is estimated to be similar to the cost of treating Ebola patients (*i.e.*, $30,000–$50,000 per day) and it is assumed that evaluation requires 24–48 hours, a lower bound cost estimate for evaluation would be

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[156] Marks S.M., Flood J., Seaworth, B., et al. Treatment practices, outcomes, and costs of multidrug-resistant and extensively drug-resistant tuberculosis, United States, 2005–2007. Emerging Infectious Disease. 2014; 20(5):812–820.

[157] Sun L.H. Cost to treat Ebola in the U.S.: $1.16 million for 2 patients. Washington Post November 18, 2014.

[158] Worstall T. The Free Market Won't Produce An Ebola Cure; So Should Government Instead? Forbes: August 8, 2014. *http://www.forbes.com/sites/timworstall/2014/08/08/the-free-market-wont-produce-an-ebola-cure-so-should-government-instead/#f8f45d46cac5* Accessed June 13, 2016.

[159] Sun L.H. Cost to treat Ebola in the U.S.: $1.16 million for 2 patients. Washington Post November 18, 2014 *https://www.washingtonpost.com/news/post-nation/wp/2014/11/18/cost-to-treat-ebola-in-the-u-s-1-16-million-for-2-patients/?utm_term=.283370dc6c47*. Accessed6/10/2016.

$30,000/day × 1 day = $30,000 and an upper bound cost estimate could be calculated from $50,000/day × 2 days = $100,000. The midpoint cost estimate is $65,000. For 29 patients at the midpoint cost estimate, the total cost is 29 patients × $65,000 per patient = $1,885,000.

For the less restrictive alternative, HHS/CDC assumes a best estimate that is the same as the expected cost for hospital follow-up as part of the 2014–16 Ebola enhanced risk assessment program. This is not an annual cost since HHS/CDC does not perceive that it is likely to implement enhanced risk assessment programs on an annual basis in the future. For the lower bound estimated cost in a one-year period if an enhanced risk assessment program is implemented, HHS/CDC assumes a cost equal to 25% of that estimated for the Ebola enhanced risk assessment program or $471,250. For an upper bound estimate in any one year, HHS/CDC assumes that the program costs five times more than that estimate for the Ebola risk assessment program or $9,425,000.

If HHS/CDC has to pay these costs, given its fixed budget, other HHS/CDC programs would have to receive less funding. One example of a program that HHS/CDC supports is an overseas vaccination program for refugees. This program was recently introduced by the Division of Global Migration and Quarantine with assistance from interagency partners. Since vaccination is often compulsory for children to attend public schools, most refugee children would have to be vaccinated after arrival in the United States even if HHS/CDC is unable to support overseas vaccination. According to unpublished data, the cost to provide vaccines in countries from which refugees travel to the United States is much lower than the U.S. vaccination costs even using Medicaid reimbursement rates. The 2015 price of measles mumps and rubella vaccine available from UNICEF, who supplies most countries from which U.S.-bound refugees travel, is $1.08—$3.25.[160] In comparison, the same vaccine costs $19.90 when publicly procured in the United States.[161] HHS/CDC estimates that the cost of vaccine procurement and delivery for refugees is at least half as expensive overseas compared to domestic vaccination after arrival. In addition, U.S.-bound refugees tend to be at much greater risk of communicable diseases than other international travelers. One study found that the costs associated with a single case imported by a refugee was $25,000.[162]

At the same time, U.S. healthcare payers or state/local health departments would not have to incur the marginal costs that would be paid by HHS/CDC. This could lead to reduced out-of-pocket payments by those that need to be tested or treated and reduced payments for their health insurers. In some situations, costs may be covered as charitable care by treatment facilities if patients are unable to pay.

For the more restrictive alternative, HHS/CDC considers a scenario in which it would never have to pay for care and treatment. This would reduce HHS/CDC's current estimated payment of $48,000 per year to zero and healthcare treatment facilities or health departments would like have to pay an equivalent amount. The lower bound is half of the estimate of current payments ($24,000) and upper bound is double the average annual payments ($96,000). The societal cost of this alternative is difficult to measure and would depend on whether treatment facilities would begin to refuse to admit patients subject to Federal orders, but not in dire need of treatment (*e.g.*, an undocumented immigrant with infectious tuberculosis with non-life-threatening symptoms).

§ 71.63 *Suspension of entry of animals, articles, or things from designated foreign countries and places into the United States*

In this NPRM, HHS/CDC is elucidating its authority to temporarily suspend entry of animals, articles or things from designated foreign countries and places into the United States. HHS/CDC cannot predict how often such authority may be used in the future or for what purpose. HHS/CDC exercised this authority on June 11, 2003, "when under 42 CFR 71.32(b), HHS/CDC implemented an immediate embargo on the importation of all rodents from Africa (order Rodentia)." [163] Simultaneously, but unrelated to provisions included in this NPRM, "the Director of CDC and the Commissioner of Food and Drugs, under 42 CFR 70.2 and 21 CFR 1240.30 respectively, issued a joint order prohibiting, until further notice, the transportation or offering for transportation in interstate commerce, or the sale, offering for sale, or offering for any other type of commercial or public distribution, including release into the environment, of:

- Prairie dogs (Cynomys sp.);
- Tree squirrels (Heliosciurus sp.);
- Rope squirrels (Funisciurus sp.);
- Dormice (Graphiurus sp.);
- Gambian giant pouched rats (Cricetomys sp.);
- Brush-tailed porcupines (Atherurus sp.); and
- Striped mice (Hybomys sp.)." [164]

Both provisions were necessary to prevent transmission of monkeypox, a rare, zoonotic, viral disease that occurs primarily in the rain forest countries in Central and West Africa. (A zoonotic disease is a disease of animals that can be transmitted to humans under natural conditions.) The illness was first noted in monkeys in 1958, but, in Africa, serologic evidence of monkeypox infection has been found in many other species, including some species of primates, rodents, and lagomorphs (which includes such animals as rabbits). African rodents are considered to be the most likely natural host of the monkeypox virus.[165]

The temporary ban was later codified as a permanent restriction on importation of African rodents and other animals that may carry the monkeypox virus with an exception, which allows importation for scientific, exhibition, or educational purposes if a written request for such importation is approved CDC (existing 42 CFR 71.56). This suspension of import was codified in an interim final rule published on November 4, 2003.[166]

Since the African rodent embargo in 2003, HHS/CDC has implemented only one other embargo. On January 13, 2004, the Department of Health and Human Services (HHS) announced an immediate embargo on the importation of civets to the United States. At the time, civets had been identified as a possible link to SARS transmission in China.[167]

HHS/CDC does not have any data on the number of illegal imports of African rodents or civets during the time the temporary embargos have been in place and no way to quantify the impact of codification of this authority. The African rodent embargo predated the implementation of HHS/CDC's Quarantine Activity Reporting System, which is used to document its activities. For civets, HHS/CDC has data on four attempted importations for the period from October 13, 2005 through June 10, 2016. Among the four attempted importations, three were allowed to enter the United States with a special permit for science, education or exhibition. The fourth shipment was for commercial purposes. This shipment was denied entry and the animals were returned to the source country. The importer was aware of the civet embargo, but did not realize the animal in question were part of the same family (*Viverridae*) that are prohibited. HHS/CDC would like to solicit public comment on how behaviors might change with proposed codification under 71.63 with this NPRM compared to HHS/CDC's reliance on existing 71.32b when implementing temporary animal importation embargos.

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[160] *http://www.unicef.org/supply/files/MMR.pdf.* Accessed 6/15/2016.

[161] *http://www.cdc.gov/vaccines/programs/vfc/awardees/vaccine-management/price-list/2015/2015-07-01.html#modalIdString_CDCTable_0.* Accessed 6/15/2016.

[162] Coleman M, Garbat-Welch L, Burke H, Weinberg M, Humbaugh K, Tindall A, et al. Direct costs of a single case of refugee-imported measles in Kentucky. Vaccine. 2012;30(2):317–21.

[163] **Federal Register** 62353 Vol. 68, No. 213 Tuesday, November 4, 2003. P. 62353–69.

[164] **Federal Register** 62353 Vol. 68, No. 213 Tuesday, November 4, 2003. P. 62353–69.

[165] Khodakevich, L., Jezek, Z. and Messinger, D., "Monkeypox Virus: Ecology and Public Health Significance," Bulletin of the World Health Organization, 66: 747–752, 1988. This reference identifies several species of squirrels as playing a major role as a reservoir for the monkeypox virus and **Federal Register** 62353 Vol. 68, No. 213 Tuesday, November 4, 2003. P. 62353–69.

[166] **Federal Register** 62353 Vol. 68, No. 213 Tuesday, November 4, 2003. P. 62353–69.

[167] *https://www.ndhan.gov/data/health/CDC%20Advisory%2000183.pdf.* Accessed on 5/2/2016.

The temporary embargo on African rodents implemented on June 11, 2003 provides an example of how HHS/CDC has used existing regulatory authority under 42 CFR 71.32(b), which states that "Whenever the (CDC) Director has reason to believe that any arriving carrier or article or thing on board the carrier is or may be infected or contaminated with a communicable disease, he/she may require detention, disinfection, disinfestation, fumigation, or other related measures respecting the carrier or article or thing as he/she considers necessary to prevent the introduction, transmission, or spread of communicable diseases." The proposed language under 71.63 would codify how this authority may be applied in the future. Since this provision does not impose any new regulatory burden, the mostly likely economic impact is no change from the current baseline. A qualitative benefit of the proposed 71.63 is improved understanding of how and why HHS/CDC may suspend entry of animals, articles, or things in the future. An estimate of the economic impact of the temporary embargo of African rodents provides an example of the potential economic impact of future restrictions that HHS/CDC may deem necessary to protect public health.

Costs of the African Rodent Embargo

The costs associated with a suspension of imports can be estimated based on the lost value to consumers and producers associated with not being able to import, sell, barter, or exchange African rodents. At the time of prohibition, African rodents were imported primarily for commercial, or science, education and exhibition purposes. In 2002, a total of 11,587 live rodents were imported, and 1,378 of them (around 12%) were from Africa.[168] In 2013, the total number of imported live rodents were 173,761. During this period, there was a shift from wild-caught species, including those of African origin, to other rodent species shipped from multiple countries outside of the African continent.[169] The percentage of wild-captured imports declined from 75% during 1999 to less than 1% during 2013.[170] Although the total market for imported rodents increased by approximately 15 times (1500%), HHS/CDC believes that the market for African rodents would probably not have expanded at the same rate. One reason is that market for African rodents would likely be more of a niche market for exotic pets compared to the overall market for domestic rodents. As a point of comparison, imports from Asian countries experienced a smooth decline during 1999–2013.[171] A second reason is that consumer demand for African rodents would likely decline after the association of African rodents with the risk of contracting monkeypox virus was clearly demonstrated in the U.S. market.

To provide a conservative estimate of the economic cost of the prohibition on imports of African imports, HHS/CDC uses the average number of African rodent imports in the three years prior to the import suspension to estimate the number of imports as the baseline if the import embargo had not been implemented. On average, 959 African rodents per year were imported between 2000 and 2002.

HHS/CDC assumes that the annual cost of the African rodent import embargo can be subdivided into the following three categories: (1) African rodents imported using a special permit from CDC, (2) African rodents that are replaced by other regions' imported substitutes, and (3) African rodents that cannot be imported with special permits or substituted. The summary of the costs for each category are included in Table 56 and summarized subsequently.

TABLE 56—SUMMARY OF THE ANNUAL INCREMENTAL COSTS OF THE AFRICAN RODENTS EMBARGO, 2015 USD

Source of cost	Costs
Importing African rodents using a special permit from CDC	$744
Use of substitute rodents from other regions	11,900
Lost consumer surplus due to African rodents unavailability	6,390
Total	19,034

Incremental Costs of Importing African Rodents Using a Special Permit From CDC for Scientific, Educational, or Exhibition Purposes

African rodents that otherwise would be prohibited are eligible for a special permit from the CDC director if they are imported for scientific, educational, or exhibition purposes. Approximately 65 African rodents per year were imported from 2004 to 2013.[172] The HHS/CDC assumes that all these imported African rodents after the ban are used for scientific, educational, or exhibition purposes.

HHS/CDC estimates that the permitting process imposes additional costs that would not be incurred in the absence of the embargo. On an annual basis, the annual cost to obtain a special permit from CDC will result in about $372 in incremental costs based on an assumption that the average hourly wage importer's hourly wage is $31 and African rodents arrive in three separate shipments. Thus, HHS/CDC assumes that around 20 African rodents are included in each shipment (Table 57). The analysis does not include costs to appeal a permit denial.

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[168] Lankau E.W., Sinclair J.R. Schroeder B.A., Galland G.G., Marano N. Public health implications of changing rodent importation patterns—United States, 1999–2013, Transboundary and Emerging Diseases. 2015.

[169] Schroeder, B., J. McQuiston, R. Marquis, G. Galland, and N. Marano, 2008: Anticipating the next monkeypox: Trends in rodent importation, 1999–2006. International Conference on Emerging Infectious Diseases, Atlanta GA (abstract, 2008).

[170] Lankau E.W., Sinclair J.R., Schroeder B.A., Galland G.G., Marano N. Public health implications of changing rodent importation patterns—United States, 1999–2013, Transboundary and Emerging Diseases. 2015.

[171] Lankau E.W., Sinclair J.R., Schroeder B.A., Galland G.G., Marano N. Public health implications of changing rodent importation patterns—United States, 1999–2013, Transboundary and Emerging Diseases. 2015.

[172] Lankau E.W., Sinclair J.R., Schroeder B.A., Galland G.G., Marano N. Public health implications of changing rodent importation patterns—United States, 1999–2013, Transboundary and Emerging Diseases. 2015.

TABLE 57—PER-ANIMAL INCREMENTAL COST TO REQUEST SPECIAL PERMITS TO IMPORT AFRICAN RODENTS, 2015 USD

Importer time per shipment (hours) [a] (A)	Importer's hourly labor cost (B)	Shipments imported with special permit (C)	Number of African rodents per shipment (D)	Overhead multiplier (E)	Importer cost to request special permit (A × B × C × E)
4	$31	3	20	100%	$744

[a] The analysis assumes a greater time burden to request a special permit to import animals that are prohibited because more information is required as a part of this request, including detailed descriptions of travel conditions and other measures taken to prevent the spread of disease.

Incremental Costs Associated With the Use of Substitute Rodents

Commercially imported African rodents are expected to be replaced either by imported rodents from other regions or by increased U.S. production of rodents. Most African rodents are exotic species, and are not commonly imported rodents relative to the more commonly imported hamsters, guinea pigs, or cavies.[173] HHS/CDC assumes that all substitutes would be imported from countries other than Africa and would not be replaced by domestically produced substitutes.

The estimated price of imported non-African rodents is $20. According to 2012 data contained in the U.S. Fish and Wildlife Service's (USFWS) Law Enforcement Management Information System (LEMIS), 75 percent of rodents imported in 2008 were hamsters, and another 3 percent were chinchillas. A sample of prices for rodents advertised online yielded an average cost of about $15 for hamsters and an average cost of $142 for chinchillas. The weighted average price of these animals is around $20. Since African rodents are exotic species, HHS/CDC assumes that the price of African rodents is higher than the average price of imported non-African rodents. Thus, HHS/CDC uses the average price of chinchillas, which is about seven times greater than the estimated price of more commonly purchased rodents. In addition to the potential price increase associated with imports from other regions, U.S. consumers may also derive less utility from substitutes for African rodents. HHS/CDC estimates substitution costs by assuming that these costs are 10% of the estimated price of African rodents (based on chinchillas). As a result, U.S. consumers would have to pay approximately $14 more or lose $14 in utility for each substituted rodent import in place of the African rodents that would be purchased in the absence of an embargo (Table 58).

TABLE 58—INCREMENTAL COST OF USING OTHER IMPORTED SUBSTITUTES IN PLACE OF AFRICAN RODENTS, 2015 USD

Incremental cost per African rodent [a] (A)	Number of rodents [b] substituted (B)	Total incremental cost (A × B)
$14	850	$11,900

[a] $142 × 10%.
[b] 894 of commercially imported African rodents × 95%.

Incremental Costs of Lost use due to African Rodents' Unavailability

HHS/CDC assumes that substitutes are not available for 5% of commercially imported African rodents. The absence of these animals will result in lost profit for the affected importers and lost utility to the affected consumers. HHS/CDC assumes that the average price can be used to estimate these costs, although HHS/CDC acknowledges that this may be an underestimate because lost consumer surplus is likely to be greater than the average price. HHS/CDC estimates the cost of lost consumer surplus associated with the lack of acceptable substitutes for U.S. consumers who can no longer import African rodents at 45 × $142 = $6,390 (Table 59).

TABLE 59—INCREMENTAL COST OF LOST USE DUE TO AFRICAN RODENTS UNAVAILABILITY, 2015 USD

Incremental cost per unavailable African rodent [a] (A)	Number of African rodents becoming unavailable [b] (B)	Total incremental cost (A × B)
$142	45	$6, 390

[a] HHS/CDC adapted price of chinchillas for the price of unavailable African rodents
[b] 894 commercially imported African rodents × 5%

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[173] Lankau E.W., Sinclair J.R. Schroeder B.A., Galland G.G., Marano N. Public health implications of changing rodent importation patterns—United States, 1999–2013, Transboundary and Emerging Diseases. 2015.

Benefits of the African Rodent Embargo

The economic benefits of the African rodent embargo are likely much greater than the estimated costs. The primary benefits are improvements to human and animal health in the United States, averted public health measures necessary to contain a monkeypox outbreak, and averted costs to other animal markets in case of transmission of monkeypox from African rodents to other species through intermingling in the pet industry. The 2003 monkeypox outbreak resulted in a total of 71 cases that were clinically or laboratory confirmed.[174] Among the 71 total cases, 16 patients (23%) with monkeypox infections were admitted to hospitals for treatment or for isolation. Two patients had serious clinical illness, but subsequently recovered and no deaths associated with monkeypox were reported.[175] The two severe cases occurred in children who required intensive care, one for severe monkeypox-associated encephalitis (encephalitis is an inflammation of the brain), and one with profound painful cervical (neck) and tonsillar adenopathy (adenopathy refers to an enlargement of the glands) and diffuse pox lesions, including lesions in the throat.[176] Otherwise, the clinical symptoms of monkeypox included skin lesions with fever (temperature above 38 °C, 100.4 °F), drenching sweats and severe chills, headache, sore throat and persistent coughing. Other less common symptoms included lymphadenopathy (swollen glands), mild chest tightness, tonsillar erosion, general body malaise, myalgia (muscle aches), back pain and nasal congestion.[177]

The number of monkeypox cases was increasing over an approximately 3-week period from the identification of the first case on May 15, 2003 through the week ending June 8, 2003. The number of cases declined subsequently; the date of onset for the last case was June 20, 2003.[178] In the United States, individuals apparently began contracting monkeypox, primarily as a result of contact with prairie dogs that had contracted monkeypox from diseased African rodents. Investigations indicate that a Texas animal distributor imported a shipment of approximately 800 small mammals from Ghana on April 9, 2003, and that shipment contained 762 African rodents, including rope squirrels (Funiscuirus sp.), tree squirrels (Heliosciurus sp.), Gambian giant pouched rats (Cricetomys sp.), brushtail porcupines (Atherurus sp.), dormice (Graphiurus sp.), and striped mice (Hybomys sp.). Some animals were infected with monkeypox, and CDC laboratory testing confirmed the presence of monkeypox in several rodent species, including one Gambian giant pouched rat, three dormice, and two rope squirrels. Of the 762 rodents from the original shipment, 584 were traced to distributors in six states. A total of 178 African rodents could not be traced beyond the point of entry in Texas because records were not available.[179]

Non-native animal species, such as African rodents, can create serious public health problems when they introduce a new disease, such as monkeypox, to the native animal and human populations. The transportation, sale, or distribution of an infected animal, or the release of an infected animal into the environment can result in the further spread of disease to other animal species and to humans. Several States issued orders or emergency rules to prohibit the importation, sale, distribution, release, disposal, and/or display of prairie dogs and certain rodents.[180] [181] [182] [183] [184] [185]

The monkeypox outbreak was contained in the United States after CDC and the public health departments in the affected states, together with the U.S. Department of Agriculture, the Food and Drug Administration, and other agencies, participated in a variety of activities that prevented further spread of monkeypox.

To assist with the investigation and outbreak response, CDC took the following steps in addition to the embargo on the importation of African rodents:

- Activated its Emergency Operations Center.
- Deployed teams of medical officers, epidemiologists, and other experts to several states to assist with the investigation.
- Conducted extensive laboratory testing on specimens from humans and animals thought to have been exposed to monkeypox.
- Issued interim U.S. case definitions for human monkeypox and for animal monkeypox.
- Issued interim guidelines on infection control and exposure management for patients in the health care and community settings.
- Issued an immediate embargo and prohibition on the importation, interstate transportation, sale, and release into the environment of certain rodents and prairie dogs.
- Provided ongoing assistance to state and local health departments in investigating possible cases of monkeypox in both humans and animals the United States.
- Worked with state and Federal agencies to trace the origin and distribution of potentially infected animals.
- Issued an interim guidance on the use of smallpox vaccine (which also can be used to protect people against monkeypox), cidofovir (an antiviral medication), and vaccinia immune globulin (an antibody product obtained from the blood of people who have received the smallpox vaccine) in the setting of an outbreak of monkeypox.
- Issued interim guidelines for veterinarians.
- Issued interim guidance for persons who have frequent contact with animals, including pet owners, pet shop employees, animal handlers, and animal control officers.[186]

These activities suggest the scale of the response required to contain monkeypox and the potential threat posed by the importation of African rodents. The public health response is estimated to require at least 20 HHS/CDC employees over a 2.5 month period. These employees are assumed to be compensated at the GS–13, step 5 level on average. In addition, the total number of personnel from public health departments in the six affected states are assumed to at least equal the number of HHS/CDC employees. The average wage rate for public health departments is estimated based on 2015 U.S. average wage rates for epidemiologists reported in the May 2015 National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics ($36.97, category 19–1041).[187] Total costs for the public health response include a 100% multiplier to account for overhead costs for these employees, but do not include potential travel and per diem costs that may have been incurred to investigate the outbreak. The total costs to HHS/CDC and public health departments are summarized in Table 60.

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[174] Centers for Disease Control and Prevention (CDC). Update: Multistate outbreak of Monkeypox—Illinois, Indiana, Kansas, Missouri, Ohio, and Wisconsin, 2003. Morb Mort Weekly Rep, . 2003;52:642–6.

[175] Centers for Disease Control and Prevention (CDC). Update: Multistate outbreak of Monkeypox—Illinois, Indiana, Kansas, Missouri, Ohio, and Wisconsin, 2003. Morb Mort Weekly Rep, . 2003;52:642–6.

[176] **Federal Register** 62353 Vol. 68, No. 213 Tuesday, November 4, 2003. P. 62353–69.

[177] Sejvar JJ, Chowdary Y, Schomogyi M, Stevens J, Patel J, Karem K, et al. Human Monkeypox Infection: A Family Cluster in the Midwestern United States. Journal of Infectious Diseases. 2004;190:1833–40.

[178] Centers for Disease Control and Prevention (CDC). Update: Multistate outbreak of Monkeypox—Illinois, Indiana, Kansas, Missouri, Ohio, and Wisconsin, 2003. Morb Mort Weekly Rep 2003;52:642.

[179] Centers for Disease Control and Prevention (CDC). Update: Multistate outbreak of Monkeypox—Illinois, Indiana, Kansas, Missouri, Ohio, and Wisconsin, 2003. Morb Mort Weekly Rep, . 2003;52:642–6.; **Federal Register** 62353 Vol. 68, No. 213 Tuesday, November 4, 2003. P. 62353–69.

[180] State of Colorado, Wildlife Commission, "Emergency Regulation," dated July 10, 2003.

[181] State of Illinois, "Executive Order in Response to Orthopox Outbreak," dated June 7, 2003.

[182] State of Indiana, Board of Animal Health, Emergency Rule, dated June 9, 2003.

[183] State of Michigan, Department of Community Health, "Order Finding Imminent Danger to the Public Health and Requiring Corrective Action," dated June 13, 2003, and later amended on June 27, 2003.

[184] State of North Dakota, State Board of Animal Health, "In the matter of: Monkeypox in Prairie Dogs and Gambian Giant pouched Rats," Order No. 2003–04, dated June 11, 2003.

[185] State of Wisconsin, Department of Agriculture, Trade, and Consumer Protection, "Emergency Rule," dated June 9, 2003.

[186] *http://www.cdc.gov/poxvirus/monkeypox/outbreak.html.* Accessed 5/2/2016.

TABLE 60—ESTIMATED COSTS OF THE PUBLIC HEALTH RESPONSE FOR THE 2003 MONKEYPOX OUTBREAK IN THE UNITED STATES, 2015 USD

	Number of employees	Duration (months)	Average hourly wage rate	Overhead multiplier (%)	Total cost
HHS/CDC employees	20	2.5	$47.36	100	$757,760
State or local health departments	20	2.5	36.97	100	591,520
Total					$1,349,280

The list of HHS/CDC activities referenced above include guidance provided to veterinarians, persons who have frequent contact with animals including pet owners, pet shop employees, animal handlers, and animal control officers. It is likely that all of these stakeholders incurred costs as a result of the monkeypox outbreak; however, HHS/CDC does not have data to quantify most of these costs. HHS/CDC does have some data for one set of affected stakeholders. The size of the prairie dog market was estimated to be approximately $4.5 million in 2003,[188] which would correspond to $5.8 million in 2015 USD after adjustment using the U.S. Consumer Price Index. Considering only the disruption to the prairie dog market, HHS/CDC estimates that the cost to this market would be at least 25% of the total market size in any year in which monkeypox transmission was associated with sales of prairie dogs. This large cost is estimated because infection of prairie dogs led to significant restrictions on interstate transport of prairie dogs and because several states issued orders or emergency rules to prohibit the importation, sale, distribution, release, disposal, and/or display of prairie dogs. This one-time 25% reduction would correspond to an annual cost of about $1.5 million just to this one market in the event of a re-introduction of monkeypox to the United States and transmission within the prairie dog population.

The treatment costs for individuals diagnosed with monkeypox or exposed to infected persons or animals include hospitalization, outpatient treatment, medications, vaccinations (with smallpox vaccine), laboratory diagnosis, and the opportunity costs to individuals who contract monkeypox and cannot undertake their normal daily activities. Laboratory diagnosis of monkeypox can involve multiple approaches including combined Polymerize Chain Reaction (PCR) tests, enzymes-linked immunosorbent assays (ELISA) tests, DNA extraction of tissues to perform molecular tests and others. Most of the patients with monkeypox disease were treated with antibiotics (ciprofloxacin and doxycycline) and a few patients received intravenous acyclovir and valacyclovir medications.[189] The costs of treating monkeypox were not systematically documented.[190]

Table 61 provides a rough estimate of potential illness costs associated with an outbreak of monkeypox of similar size to the outbreak that occurred in 2003. The documented costs include 56 cases treated on an outpatient basis in emergency rooms at an estimated cost of $1,455 per patient.[191] This estimate is based on the U.S. average cost for an outpatient hospital visit for any illness and is probably a very conservative estimate of the outpatient cost of treating monkeypox. Hospitalization costs are estimated at $16,516 per patient for each of 16 cases based on the average cost of hospitalization for any illness.[192] Again, this cost estimate is probably very conservative for monkeypox treatment.

All individuals (outpatients and inpatients) who contract the disease are estimated to lose an average of 12 days of productive activity. This assumption is based on a clinical report that on average infected individuals were ill for between 3 to 24 days.[193] To be conservative, HHS/CDC only includes lost productivity costs for adults. Among laboratory confirmed monkeypox cases, 11 out of 35 (31%) patients occurred in patients less than 18 years old. Applying this ratio to the total number of cases (71), approximately 49 adults would incur lost productivity costs. For each adult, average productivity costs are estimated based on the U.S. average hourly salary ($23.23) reported in the 2015 Occupational Employment Statistics from the U.S. Bureau of Labor Statistics [194] and assuming an 8-hour workday. Productivity losses are then estimated based on the average wage rate × 12 days × 8 hours per day × number of monkeypox patients ($108,531). The total illness are estimated to be about $453,000 (Table 61).

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[187] *http://www.bls.gov/oes/current/oes_nat.htm.* Accessed 5/2/2016.

[188] **Federal Register** 62353 Vol. 68, No. 213 Tuesday, November 4, 2003. P. 62353–69.

[189] Ligon BL. Monkeypox: A review of the history and emergence in the Western hemisphere. Seminars in Pediatric Infectious Diseases. 2004; 15:280–7.

[190] Kroeger T. Economic Impacts of Live Wild animal Imports in the United States. Defenders of Wildlife; 2004.

[191] Healthcare Costs Institute. Healthcare Costs and Utilization Report. Washington DC: Health Care Costs Institute; 2011.

[192] Healthcare Costs Institute. Healthcare Costs and Utilization Report. Washington DC: Health Care Costs Institute; 2011.

[193] Reed KD, Melski JW, Graham MB, Regnery RL, Sotir MJ, Wegner MV, et al. The detection of monkeypox in humans in the western hemisphere. N Engl J Med 2004; 350:342–50.

[194] *http://www.bls.gov/oes/current/oes_nat.htm.* Accessed 5/2/2016.

TABLE 61—ILLNESS COSTS ASSOCIATED WITH 2003 U.S. MONKEYPOX OUTBREAK, 2015 USD

Activity (A)	Units (B)	Unit cost[a] A × B = (C)	Total costs
Outpatient treatment, ER Visit Cost[195]	[196] 55	$1,455 per patient	$80,025
Hospital stay[197]	[198] 16	16,516 per patient	264,256
Lost productivity	48.7 (69%) for 584 Days	161.68 per patient-day	108,531
Total costs			452,812

[a] Unit costs updated to USD 2015 using the U.S. Consumer Price Index where appropriate.

The total quantified costs associated with the 2003 monkeypox outbreak are summarized in Table 62. These include a partial accounting of the costs incurred to HHS/CDC and to local public health departments, a one-time estimate of the potential costs to the U.S. prairie dog market, and a conservative estimate of illness costs for persons infected with monkeypox ($3.3 million).

TABLE 62—ESTIMATED COSTS OF 2003 MONKEYPOX OUTBREAK, 2015 USD

Public health response costs	$1,349,280
One-time costs to prairie dog market in the United States	1,500,000
Illness costs	452,812
Total	3,302,092

The outbreak costs reported in Table 62 represent a very conservative estimate of the potential benefits of reducing the probability of a future re-introduction of the monkeypox virus into the United States. The total costs of such an outbreak would probably greatly exceed the conservative estimates presented in Table 62. Since the order to embargo the importation of African rodents in June 2003 and subsequent permanent restriction on the importation of African rodents codified in existing 42 CFR 71.56, the monkeypox virus has not been reintroduced to the United States. Comparing the potential benefits of an averted monkeypox outbreak in Table 62 ($3.3 million) to the estimated costs to African rodent importers and potential consumers (Table 56, $19,000), it is extremely likely the benefits of the African rodent import prohibition would greatly exceed the costs. However, HHS/CDC is not able to quantify the risk of re-introduction with and without the restrictions on African rodent imports. Although this NPRM only seeks to codify HHS/CDC's ability to suspend entry of animals, articles, or things from designated foreign countries and places into the United States based on existing 42 CFR 71.32(b), this example demonstrates the potential costs and benefits of one such action. Because this outbreak occurred about 13 years ago, HHS/CDC specifically solicits public comment on cost estimates associated with the prohibition of African rodent imports and the cost of the 2003 monkeypox outbreak.

Evaluation of Alternatives

Two potential alternatives are considered to codification of this provision in the NPRM. Under the first less restrictive alternative, HHS/CDC would not implement temporary embargos after it becomes aware of imminent risks to public health in the United States. Under this scenario, there would be no embargo on the importation of African rodents between June 11, 2003 and November 4, 2003. Under this scenario, the United States would have remained at risk for the re-introduction of monkeypox virus and the need to eliminate the virus from the United States animal and human populations. This scenario is elaborated above.

The more restrictive alternative would be for HHS/CDC to no longer consider special permits to allow importation for scientific, education, and display purposes. HHS/CDC believes that limiting importations to these purposes protects public health, while allowing importation to occur in very controlled environments. If special permits were discontinued, African rodent importers would no longer have to fill out import permits at an annual cost of $744 (Table 57). This is the cost to create three special permit applications per year.

In comparison, civet shipments with special permits occur approximately once every three years, so the annual cost to create special permits is $744/9 = $83 for civets. However, importers would no longer be able to import African rodents or civets for science, education, or exhibition under the more restrictive alternative. Thus, the societal costs of disallowing importation of animals with special permits under temporary embargos would outweigh the potential cost savings associated with the time spent filing for special permits. HHS/CDC would like to solicit public comment on the value of continuing to allow importation of animals under temporary embargos for science, education, and exhibition with special permits.

B. The Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), agencies are required to analyze regulatory options to minimize significant economic impact of a rule on small businesses, small governmental units, and small not-for-profit organizations. HHS/CDC finds that the NPRM is not expected to change the cost of compliance for small businesses, small governmental units, or small not-for-profit organizations.

C. Paperwork Reduction Act of 1995

HHS/CDC has determined that this NPRM contains proposed information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). A description of these proposed provisions is given below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. Comments are invited on the following subjects.

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[195] Healthcare Costs Institute. Healthcare Costs and Utilization Report. Washington DC: Health Care Costs Institute; 2011.

[196] Centers for Disease Control and Prevention (CDC). Update: Multistate outbreak of Monkeypox—Illinois, Indiana, Kansas, Missouri, Ohio, and Wisconsin, 2003. Morb Mort Weekly Rep,. 2003;52:642—6.

[197] Healthcare Costs Institute. Healthcare Costs and Utilization Report. Washington DC: Health Care Costs Institute; 2011.

[198] Centers for Disease Control and Prevention (CDC). Update: Multistate outbreak of Monkeypox—Illinois, Indiana, Kansas, Missouri, Ohio, and Wisconsin, 2003. Morb Mort Weekly Rep. 2003;52:642–6.

- Whether the proposed collection of information is necessary for the proper performance of the functions of HHS/CDC, including whether the information will have practical utility.
- The accuracy of HHS/CDC's estimate of the burden of the collection of information.
- Ways to enhance the quality, utility, and clarity of the information to be collected.
- Ways to minimize the burden of the collection of information on respondents, including by using information technology.

While HHS/CDC currently has approval to collect certain information concerning illnesses and travels under OMB Control Numbers 0920–0134 (*Foreign Quarantine Regulations,* expiration date 05/31/2019) and 0920–0488 (*Restrictions on Interstate Travel of Persons,* expiration date 05/31/2019), this NPRM is proposing updates to certain information collections within these control numbers.

In a separate information collection request accompanying this NPRM, CDC is also requesting approval to require that airlines and vessels provide certain data elements to CDC, as described in proposed 71.4 and 71.5, for the purposes of contact tracing. This information is used to locate individuals, both passengers and crewmembers, who may have been exposed to a communicable disease during travel and to provide them with appropriate public health follow-up.

CDC is taking public comment on the burden to the public outlined in the three information collection requests below.

Written comments should be received within 60 days of the publication of this NPRM. Please send written comments to Information Collection Review Office, 1600 Clifton Road NE., Atlanta, GA 30333.

Proposed Projects

(1) Foreign Quarantine Regulations (42 CFR part 71) (OMB Control No. 0920–0134)—Nonmaterial/non-substantive change—National Center for Emerging, and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

(2) Restrictions on Interstate Travel of Persons (42 CFR part 70) (OMB Control No. 0920–0488)—Nonmaterial/non-substantive change—National Center for Emerging, and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

(3) Airline and Vessel and Traveler Information Collection (42 CFR part 70 and 71)—New Information Collection Request—National Center for Emerging, and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Description

Section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264) authorizes the Secretary of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. Legislation and existing regulations governing foreign and interstate quarantine activities (42 CFR parts 70 and 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures in order to protect the public health. Currently, with the exception of the CDC's Vessel Sanitation Program, inspections are performed only on those vessels and aircraft that report illness before arriving or when illness is discovered upon arrival. Other inspection agencies assist quarantine officers in public health risk assessment and management of persons, pets, and other importations of public health importance. These practices and procedures ensure protection against the introduction and spread of communicable diseases into the United States with a minimum of recordkeeping and reporting as well as a minimum of interference with trade and travel. The information collection burden is associated with these recordkeeping and reporting requirements.

At present, HHS/CDC has approval from OMB to collect certain information and impose recordkeeping requirements related to foreign quarantine responsibilities under OMB Control Number 0920–0134 (expiration 05/31/2019). The specific provisions within 42 CFR part 71 that include information collection under are as follows:

42 CFR 71.21(a), (b), and (c) Radio report of death and illness.

42 CFR 71.33(c) Report of persons held in isolation or surveillance.

42 CFR 71.35 Report of death or illness on carrier during stay in port.

42 CFR 71.51 Dogs and cats.

42 CFR 71.52 Turtles, terrapins, tortoises.

42 CFR 71.56 African Rodents.

HHS/CDC has also used its authority under 42 CFR 71.32 to require importers to submit statements or documentation of non-infectiousness for those items that may constitute a public health risk if not rendered non-infectious.

Finally, HHS/CDC has approval from OMB to request from importers/filers certain data elements to identify and clear HHS/CDC regulated imports via the Automated Commercial Environment and the International Trade Data System. These HHS/CDC Partner Government Agency Message Sets are currently limited to: HHS/CDC PGA Message Set for Importing Cats and Dogs, HHS/CDC PGA Message Set for Importing African Rodents, HHS/CDC PGA Message Set for Importing African Rodent and All Family Viverridae Products.

In this NPRM, HHS/CDC is proposing 4 non-substantive changes to OMB Control Number 0920–0134 Foreign Quarantine Regulations (42 CFR part 71):

(1) Updating the definition of "ill person", which relates to the illness reporting requirements under 42 CFR 71.21(a), (b), and (c) for airlines and vessels arriving into the United States. CDC is proposing to update the definition of "ill person" by codifying current practice with the anticipated effect of better facilitating identification of communicable diseases of concern and quarantinable communicable diseases aboard flights and maritime voyages to the United States, diseases such as measles, viral hemorrhagic fevers, active tuberculosis, and influenza caused by novel or re-emergent influenza viruses that are causing or have the potential to cause a pandemic. CDC is also proposing to include a provision to allow the Director to add new symptoms to the definition of ill person to respond to unknown communicable diseases that may emerge as future concerns.

The current definition of ill person, which applies to both airlines and maritime vessels, is anyone who:

(1) Has a temperature of 100.4 °F (or 38 °C) or greater, accompanied by a rash, glandular swelling, or jaundice, or which has persisted for more than 48 hours; or

(2) Has diarrhea, defined as the occurrence in a 24-hour period of three or more loose stools or of a greater than normal (for the person) amount of loose stools.

The proposed definition of ill person in the context of aircraft is proposed as follows:

(a) Who if onboard an aircraft:

(1) Has a fever (a measured temperature of 100.4 °F [38 °C] or greater; or feeling warm to the touch; or giving a history of feeling feverish) accompanied by one or more of the following: Skin rash, difficulty breathing, persistent cough, decreased consciousness or confusion of recent onset, new unexplained bruising or bleeding (without previous injury), persistent diarrhea, persistent vomiting

(other than air sickness), headache with stiff neck, or appears obviously unwell; or

(2) Has symptoms or other indications of communicable disease, as the CDC may announce through posting of a notice in the **Federal Register**.

The proposed definition of ill person in the context of vessels is as follows:

(b) Who if onboard a vessel:

(1) Has a fever (a measured temperature of 100.4 °F [38 °C] or greater; or feeling warm to the touch; or giving a history of feeling feverish) accompanied by one or more of the following: Skin rash, difficulty breathing, persistent cough, decreased consciousness or confusion of recent onset, new unexplained bruising or bleeding (without previous injury), persistent vomiting (other than sea sickness), headache with stiff neck, or appears obviously unwell; or

(2) Has acute gastroenteritis, which means either diarrhea, defined as three or more episodes of loose stools in a 24 hour period or what is above normal for the individual, or vomiting accompanied by one or more of the following: one or more episodes of loose stools in a 24 hour period, abdominal cramps, headache, muscle aches, or fever (temperature of 100.4 °F [38 °C] or greater); or

(3) Has symptoms or other indications of communicable disease, as the CDC may announce through posting of a notice in the **Federal Register**.

The NPRM proposes to update the current definition of ill person to better focus on the signs and symptoms of communicable diseases of public health concern and quarantinable communicable diseases. The changes define an ill person in the context of the medical resources available to the operator of an airline or vessel.

CDC already requests from pilots in command of aircraft and commanders of vessels several of the symptoms included in the revised definition of ill person through publicly available guidance to airlines and vessels. Moreover, for airlines, the updated definition also better aligns with symptoms reporting guidelines published by ICAO in Note 1 to paragraph 8.15 of Annex 9 to the Convention on International Civil Aviation, and the definition of "acute gastroenteritis" is used by the WHO and is currently included in reporting guidance from CDC's Vessel Sanitation Program. Therefore, CDC does not anticipate additional burden on airlines or vessel operators to respond to these information collections.

(2) CDC is seeking a change in the title of the information collection pertaining to reports of death and illness from vessels to CDC. The current title is *Radio Report of death or illness*—illness reports from ships. CDC seeks a change to remove "Radio" from the title. This change reflects the fact that reports to CDC primarily via means other than radio, such as the Maritime Illness and Death Reporting System, managed by CDC's Vessel Sanitation Program.

(3) CDC is seeking a change in the title of a specific information collection pertaining to reports of gastro-intestinal illness to CDC. CDC is updating the definition of ill person and is replacing the term "gastro-intestinal" with "acute gastroenteritis"; therefore, the title change is requested to align with the definition.

(4) CDC is seeking a change in title of respondents from "Maritime Conveyance Operator" to "Maritime Vessel Operator"" and from "Airline Commander or Operator" to "Pilot in Command".

Table 1 below presents estimates of annual burden (in hours) associated with each reporting and recordkeeping requirement under this OMB control number, accounting for the proposed rule changes.

Description of Respondents. Respondents to this data collection include pilots in command of aircraft, maritime vessel operators, importers/filers, and travelers/general public. The nature of the response to HHS/CDC dictates which forms are completed and by whom. The total requested burden hours are 82,779.

There is no burden to respondents other than the time taken to complete the reports to CDC, maintain recordkeeping of illness aboard vessels and records of sickness or death in imported cats and dogs, as outlined in the table below. If a cat or dog is ill upon arrival, or dies prior to arrival, an exam is required, the initial exam fee may be between $100 and $200. Rabies testing on a dog that dies may be between $50 and $100. The expected number of ill or dead dogs arriving into the United States for which CDC may require an examination is estimated at less than 30 per year.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN 0920–0134

Type of respondent	Regulatory provision or form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Maritime Vessel Operators	42 CFR 71.21(a) Report of illness or death from ships—Maritime Vessel Illness or Death Investigation Form/Cumulative Influenza/Influenza-Like Illness (ILI) Form/Radio report or transcribed email.	2,000	1	2/60	67
Pilot in Command	42 CFR 71.21 (b) Death/Illness reports from aircraft.	1,700	1	2/60	57
Maritime Vessel Operators	42 CFR 71.21(c) (MIDRS) Acute Gastro-Enteritis reports (24 and 4 hours before arrival).	17,000	1	3/60	850
Maritime Vessel Operators	42 CFR 71.21 (c) Recordkeeping—Medical logs.	17,000	1	3/60	850
Isolated or Quarantined individuals	42 CFR 71.33 Report by persons in isolation or surveillance.	11	1	3/60	1
Maritime Vessel Operators	42 CFR 71.35 Report of death/illness during stay in port.	5	1	30/60	3
Importer	42 CFR 71.51(c)(1), (d)—Valid Rabies Vaccination Certificates.	245,310	1	15/60	61,328

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN 0920–0134—Continued

Type of respondent	Regulatory provision or form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Importer	CDC Form 75.37 Notice To Owners And Importers Of Dogs: Requirement for Dog Confinement.	1,400	1	10/60	233
Importer	42 CFR 71.51(c)(i), (ii), and (iii) exemption criteria for the importation of a dog without a rabies vaccination certificate.	43,290	1	15/60	10,823
Importer	42 CFR 71.51(c)(2), (d) Application For Permission To Import A Dog Inadequately Against Rabies.	1400	1	15/60	350
Importer	42 CFR 71.51(b) (3) Dogs/cats: Record of sickness or deaths.	20	1	15/60	5
Importer/Filer	42 CFR 71.51_CDC Requested Data on Regulated Imports: Domestic Dogs and Cats (PGA Message Set).	30,000	1	15/60	7,500
Importer	42 CFR 71.52(d) Turtle Importation Permits.	5	1	30/60	3
Importers	42 CFR 71.55, 42 CFR 71.32 Dead Bodies—Death certificates.	5	1	1	5
Importer	42 CFR 71.56 (a)(2) African Rodents—Request for exemption.	20	1	1	20
Importer	42 CFR 71.56(a)(iii) Appeal	2	1	1	2
Importer/Filer	42 CFR 71.56 CDC Requested Data on Regulation Imports: Live African Rodents (PGA Message Set).	60	1	15/60	15
Importer/Filer	42 CFR 71.32 Statements or documentation of non-infectiousness.	2000	1	5/60	167
Importer/Filer	42 CFR 71.56, 42 CFR 71.32 CDC Requested Data on Regulated Imports: Products of African Rodents; Products of all Family Viverridae (PGA Message Set).	2,000	1	15/60	500
Total					82,779

The estimates are based on experience to date with current recordkeeping and reporting requirements of 42 CFR part 71, with additional burden included to account for the potential for increased reports of illness during an outbreak and for reports of disease that may have been missed by airlines or vessels and are reported to CDC after travel.

Under this NPRM, CDC is also proposing a nonmaterial/non-substantive change to Restrictions on Interstate Travel of Persons (42 CFR part 70) (OMB Control No. 0920–0488). The regulations at 42 CFR part 70 are intended to prevent the interstate spread of disease, and include a requirement that the master of vessel or person in charge of conveyance to report the occurrence on board of communicable disease. Under this regulation and control number, CDC has approval to collect the following information:

- 42 CFR 70.4 Report by the master of a vessel or person in charge of conveyance of the incidence of a communicable disease occurring while in interstate travel

Through this NPRM, CDC is proposing to add the provision 70.11 *Report of death or illness onboard aircraft operated by airline,* which specifies that the pilot in command of an aircraft operating on behalf of an airline who conducts a commercial passenger flight in interstate traffic under a regular schedule, or another designated official, shall report as soon as practicable to HHS/CDC the occurrence onboard of any deaths or ill persons among passengers or crew and take such measures as HHS/CDC may direct to prevent the potential spread of the communicable disease. HHS/CDC notes that it is not proposing changes to its existing regulatory requirement at 42 CFR 70.4, which states that the master of a vessel or person in charge of any conveyance engaged in interstate traffic on which a case or suspected case of communicable disease develops shall, as soon as practicable, notify the local health authority.

Under the NPRM, pilots in command of an aircraft, operating on behalf of an airline, that submit the ill person or death report to HHS/CDC under proposed 70.11 will not be required to also submit a report to the local health authority under current 70.4. HHS/CDC will continue to share public health information with state and local health departments through electronic disease reporting networks. It is unlikely that HHS/CDC would request follow-up reports of illnesses that are reported to the local health authorities, unless there was an urgent public health need. Therefore, CDC does not anticipate any additional burden to the respondents; however, the accounting for burden in Table 7 will add 70.11 *Report of death or illness onboard aircraft operated by airline.*

As a result of this proposal, CDC does not anticipate a change in total burden. CDC is instead allocating 95% of the reports of illness or death within the proposed 70.11 *Report of death or illness onboard aircraft operated by* *airline.* The remains 5% will remain within 70.4 Report by the master of a vessel or person in charge of conveyance of the incidence of a communicable disease occurring while in interstate travel, in the event that some reports are still made to State health authorities.

In addition to the requirement to report directly to HHS/CDC, HHS/CDC is proposing to include the definition of "ill person" for the purposes of illness reports to HHS/CDC in 42 CFR part 70. HHS/CDC has, as a matter of agency guidance, communicated with airlines that the same current set of required and requested signs and symptoms of disease, as well as any death, apply to domestic as well as international flights. This guidance is similar to that of the guidelines issued by ICAO under *Note 1 to paragraph 8.15 of Annex 9 to the Convention on International Civil Aviation.* Therefore, the new proposed definition of ill person should not affect standard practice, and no change in burden is anticipated.

Table 2 below presents estimates of annual burden (in hours) associated with each reporting and recordkeeping requirement under this OMB control number, accounting for the proposed rule changes.

Description of Respondents.

Respondents to this data collection include masters of vessels or persons in charge of conveyance and pilots in command of aircraft.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN 0920–0488

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Pilot in command	42 CFR 70.11 Report of death or illness onboard aircraft operated by airline.	190	1	7/60	22
Master of vessel or person in charge of conveyance.	42 CFR 70.4 Report by the master of a vessel or person in charge of conveyance of the incidence of a communicable disease occurring while in interstate travel.	10	1	7/60	1
Total		200			23

The total requested burden hours are 23. There is no burden to respondents other than the time taken to complete the reports. The estimates are based on experience to date with current recordkeeping and reporting requirements of 42 CFR part 70, and take into account the potential for additional burden from increased reports of illness during an outbreak and for reports of disease that may have been missed by respondents during travel and are reported to CDC by other means.

Finally, under this NPRM HHS/CDC is proposing a new information collection, Airline and Vessel and Traveler Information Collection (42 CFR part 70 and 71). This information collection request accompanies the proposed codification of issuing orders to airlines and vessel operators for the provision to CDC of airline and vessel and traveler information (aka manifests) in the event that a quarantinable communicable disease or a communicable disease of public health concern, or a death caused by a quarantinable communicable disease or communicable disease of public health concern, occurs during travel to the United States and public health follow-up is warranted. These proposed provisions are found in 42 CFR 71.4 for airlines and 71.5 for vessels.

The ordering of manifests from airlines and vessel operators arriving into the United States is an ongoing activity executed under CDC's broad regulatory authority found at 42 CFR 71.32 *Persons, carriers, and things.* In order to the increase transparency with regard to CDC's authorities and manifest order process, CDC is proposing specific regulatory provisions that outline the particular data elements CDC requires to perform contact tracing investigations. As stated in the NPRM, CDC is not mandating the collection of additional data. Only that if the airlines or maritime operators have the data elements listed in proposed 71.4 and 71.5 in their possession, they must be provided to CDC within 24 hours.

While not included in the text of this NPRM, CDC is also seeking to include two other information collections, as described in the Supporting Statement of the information collection request accompanying this NPRM.

(1) To include the collection of airline and vessel information, and passenger and crew member manifest information, from airlines and vessels engaged in interstate travel. CDC is not codifying these domestic orders in the regulation at this time.

(2) CDC is proposing to transition the Passenger Locator Form, previously approved under OMB Control Number 0920–0134 Foreign Quarantine Regulations, to this new information collection request and is proposing the ability to use the Passenger Locator Form for travelers on domestic flights.

CDC is not including burden for manifest orders for maritime vessels in the Paperwork Reduction Act section of the NPRM because CDC anticipates fewer than 10 maritime vessel manifest orders per year. Additionally, while the domestic manifest orders and transition of the Passenger Locator Form from OMB Control Number 0920–0134 into this Information Collection Request are accounted for in the Supporting Statement for Airline and Vessel and Traveler Information Collection (42 CFR part 70 and 71), they are not included here, as this NPRM is only codifying current practice with regard to manifest orders related to international flights arriving into the United States. Please see the accompanying Supporting Statement for further information on these additional information collections.

Table 3 below presents estimates of annual burden (in hours) associated with each reporting and recordkeeping requirement under this OMB control number, accounting for the proposed rule changes.

Description of Respondents.

Respondents to this data collection include the Airline Medical Officer or Equivalent and a Computer and Information Systems Manager.

TABLE 3—ESTIMATE OF ANNUAL BURDEN AIRLINE AND VESSEL MANIFEST ORDERS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Airline Medical Officer or Equivalent/ Computer and Information Systems Manager.	International TB Manifest Template	67	1	360/60	402
Airline Medical Officer or Equivalent/ Computer and Information Systems Manager.	International Non-TB Manifest Template..	29	1	360/60	174
Total	....	96	....	....	576

The total requested burden hours included in this NPRM for proposed are 576. There is no burden to respondents other than the time taken to complete the manifest information and send to CDC. The estimates are based on experience to date with current manifest order process.

D. National Environmental Policy Act (NEPA)

HHS/CDC has determined that the proposed amendments to 42 CFR part 70 and 71 will not have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

E. EO 12988: Civil Justice Reform

HHS/CDC has reviewed this rule under Executive Order 12988 on Civil Justice Reform and determines that this NPRM meets the standard in the Executive Order.

F. EO 13132: Federalism

Under Executive Order 13132, if the rulemaking would limit or preempt State authorities, then a Federalism analysis is required. The agency must consult with State and local officials to determine whether the rule would have a substantial direct effect on State or local Governments, as well as whether it would either preempt State law or impose a substantial direct cost of compliance on them.

HHS/CDC has determined that this NPRM will not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

G. Plain Language Act of 2010

Under 63 FR 31883 (June 10, 1998), Executive Departments and Agencies are required to use plain language in all proposed and final rules. HHS/CDC has attempted to use plain language in this rulemaking to make our intentions and rationale clear and requests input from the public in this regard.

List of Subjects in 42 CFR Parts 70 and 71

Apprehension, Communicable diseases, Conditional release, CDC, Ill person, Isolation, Non-invasive, Public health emergency, Public health prevention measures, Qualifying stage, Quarantine, Quarantinable Communicable Disease.

For the reasons discussed in the preamble, we propose to amend 42 CFR parts 70 and 71 as follows:

PART 70—INTERSTATE QUARANTINE

■ 1. The authority citation for part 70 continues to read as follows:

Authority: Secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); section 361–369, PHS Act, as amended (42 U.S.C. 264–272); 31 U.S.C. 9701.

■ 2. Amend § 70.1 by adding, in alphabetical order the definitions of "Agreement," "Airlines," "Apprehension," "Communicable stage," "Conditional release," "Contaminated environment," "Conveyance," "Electronic or Internet-based monitoring," "Ill person," "Incubation Period," "Master or operator," "Medical examination," *"Medical representative," "Medical reviewer," "Non-invasive," "Precommunicable stage," "Public health emergency,": Public health prevention measures," "Qualifying stage," and "Reasonably believed to be infected, as applied to an individual" to read as follows:*

§ 70.1 General definitions.

Agreement means an agreement entered into between the CDC and an individual expressing a voluntary agreement between the parties that the individual will observe public health measures authorized under this part, as the CDC considers reasonably necessary to protect the public's health, including quarantine, isolation, conditional release, medical examination, hospitalization, vaccination, and treatment.

Airline(s) means any air carrier(s) or foreign air carrier(s) providing air transportation, including scheduled or public charter passenger operations operating in air commerce within the United States, as these terms are defined in 49 U.S.C. 40102, (a)(2), (a)(3), (a)(5), and (a)(21).

Apprehension means the temporary taking into custody of an individual or group for purposes of determining whether Federal quarantine, isolation, or conditional release is warranted.

* * * * *

Communicable stage means the stage during which an infectious agent may be transmitted either directly or indirectly from an infected individual to another individual.

Conditional release means surveillance as defined under 42 CFR 71.1 and includes public health supervision through in-person visits by a health official or designee, telephone, or through electronic or internet-based monitoring.

Contaminated environment means the presence of an infectious agent on a surface, including on inanimate articles, or in a substance, including food, water, or in the air.

Conveyance means an aircraft, train, road vehicle, vessel (as defined in this section) or other means of transport, including military.

* * * * *

Electronic or Internet-based monitoring means mechanisms or technologies allowing for the temporary public health supervision of an individual under conditional release and may include electronic mail, SMS texts, video conference or webcam technologies, integrated voice-response systems, entry of information into a web-based forum, wearable tracking technologies, and other mechanisms or technologies as determined by the Director or supervising health authority.

Ill person means an individual who:

(1) Has a fever (a measured temperature of 100.4 °F [38 °C] or greater, or feels warm to the touch, or gives a history of feeling feverish) accompanied by one or more of the following: Skin rash, difficulty breathing, persistent cough, decreased consciousness or confusion of recent onset, new unexplained bruising or bleeding (without previous injury), persistent diarrhea, persistent vomiting (other than air sickness), headache with stiff neck, appears obviously unwell; or

(2) Has a fever that has persisted for more than 48 hours; or

(3) Has symptoms or other indications of communicable disease, as the CDC may announce through posting of a notice in the **Federal Register**.

Incubation period means the time from the moment of exposure to an infectious agent that causes a communicable disease until signs and symptoms of the communicable disease appear in the individual. For a quarantinable communicable disease, incubation period means the precommunicable stage.

Indigent means an individual whose annual family income is below 150% of the applicable poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2) or, if no income is earned, liquid assets totaling less than 15% of the applicable poverty guidelines.

* * * * *

Master or operator with respect to a vessel, means the sea crew member with responsibility for vessel operation and navigation, or a similar individual with responsibility for a conveyance. Consistent with the definition of "operate" in 14 CFR 1.1, "operator" means, with respect to aircraft, any person who uses, causes to use or authorizes to use an aircraft, for the purpose (except as provided in 14 CFR 91.13) of air navigation including the piloting of an aircraft, with or without the right of legal control (as owner, lessee, or otherwise).

Medical examination means the assessment of an individual by an authorized health worker to determine the individual's health status and potential public health risk to others and may include the taking of a medical history, a physical examination, and collection of human biological samples for laboratory testing as may be needed to diagnose or confirm the presence or extent of infection with a quarantinable communicable disease.

Medical representative means a physician, nurse practitioner, or similar medical professional qualified in the diagnosis and treatment of infectious diseases who is appointed by the HHS Secretary or CDC Director and may include an HHS or CDC employee, to assist an indigent individual under Federal quarantine, isolation, or conditional release with a medical review under this part.

Medical reviewer means a physician, nurse practitioner, or similar medical professional qualified in the diagnosis and treatment of infectious diseases who is appointed by the HHS Secretary or CDC Director to conduct medical reviews under this part and may include an HHS or CDC employee, provided that the employee differs from the CDC official who issued the Federal order for quarantine, isolation, or conditional release.

Non-invasive means procedures conducted by an authorized health worker or another individual with suitable training and includes the physical examination of the ear, nose, and mouth; temperature assessments using an ear, oral, cutaneous, or noncontact thermometer, or thermal imaging; auscultation; external palpation; external measurement of blood pressure; and other procedures not involving the puncture or incision of the skin or insertion of an instrument or foreign material into the body or a body cavity excluding the ear, nose and mouth.

* * * * *

Precommunicable stage means the stage beginning upon an individual's earliest opportunity for exposure to an infectious agent and ending upon the individual entering or reentering the communicable stage of the disease or, if the individual does not enter the communicable stage, the latest date at which the individual could reasonably be expected to have the potential to enter or reenter the communicable stage.

Public health emergency as used in this part means

(1) Any communicable disease event as determined by the Director with either documented or significant potential for regional, national, or international communicable disease spread or that is highly likely to cause death or serious illness if not properly controlled; or

(2) Any communicable disease event described in a declaration by the Secretary pursuant to § 319(a) of the Public Health Service Act (42 U.S.C. 247d (a)); or

(3) Any communicable disease event the occurrence of which is notified to the World Health Organization, in accordance with Articles 6 and 7 of the International Health Regulations, as one that may constitute a Public Health Emergency of International Concern; or

(4) Any communicable disease event the occurrence of which is determined by the Director-General of the World Health Organization, in accordance with Article 12 of the International Health Regulations, to constitute a Public Health Emergency of International Concern; or

(5) Any communicable disease event for which the Director-General of the World Health Organization, in accordance with Articles 15 or 16 of the International Health Regulations, has issued temporary or standing recommendations for purposes of preventing or promptly detecting the occurrence or reoccurrence of the communicable disease.

Public health prevention measures means the assessment of an individual through non-invasive procedures and other means, such as observation, questioning, review of travel documents, records review, and other non-invasive means, to determine the individual's health status and potential public health risk to others.

Qualifying stage is statutorily defined (42 U.S.C. 264(d)(2)) to mean:

(1) The communicable stage of a quarantinable communicable disease; or

(2) The precommunicable stage of the quarantinable communicable disease, but only if the quarantinable communicable disease would be likely to cause a public health emergency if transmitted to other individuals.

* * * * *

Reasonably believed to be infected, as applied to an individual, means specific articulable facts upon which a public health officer could reasonably draw the inference that an individual has been exposed, either directly or indirectly, to the infectious agent that causes a quarantinable communicable disease, as through contact with an infected person or an infected person's bodily fluids, a contaminated environment, or through an intermediate host or vector, and that as a consequence of the exposure, the individual is or may be harboring in the body the infectious agent of that quarantinable communicable disease.

* * * * *

■ 3. Revise § 70.5 to read as follows:

§ 70.5 Requirements relating to travelers under a Federal order of isolation, quarantine, or conditional release.

(a) The following provisions are applicable to any individual under a Federal order, or agreement, of isolation, quarantine, or conditional release with regard to a quarantinable communicable disease or to any individual meeting the requirements of subparagraph (d) or (e) of this section:

(1) No such individual shall travel in interstate traffic or from one state or U.S. territory to another without a written travel permit issued by HHS/CDC.

(2) Requests for a travel permit must state the reasons why the travel is being requested, mode of transportation, the places or individuals to be visited, the precautions, if any, to be taken to prevent the potential transmission or spread of the communicable disease, and other information as determined necessary by the CDC to assess the individual's health condition and potential for communicable disease spread to others.

(3) The CDC will consider all requests for a permit and, taking into consideration the risk of introduction, transmission, or spread of the communicable disease, may condition the permit upon compliance with such precautionary measures as the CDC shall prescribe.

(4) An individual to whom a permit has been issued shall retain it in his/her possession throughout the course of his/her authorized travel and comply with all conditions prescribed therein, including presentation of the permit to the operators of conveyances, as required by its terms.

(5) An individual who has had his/her request for a permit denied, or who has had a travel permit suspended or revoked, may submit a written appeal to the Director. The appeal must be in writing, state the factual basis for the appeal, and be submitted to the Director within 10 calendar days of the denial, suspension, or revocation of the permit. The CDC will promptly issue a written response to the appeal, which shall constitute final agency action.

(b) The operator of any conveyance operating in interstate traffic shall not:

(1) Accept for transportation any individual whom the operator knows, or reasonably should know, to be under a Federal order or agreement of isolation, quarantine, or conditional release, unless such an individual presents a permit issued by the CDC authorizing such travel;

(2) Transport any individual whom the operator knows, or reasonably should know, to be under a Federal order or agreement of isolation, quarantine, or conditional release in violation of any of the terms or conditions prescribed in the travel permit issued by the CDC.

(c) Whenever a conveyance operating in interstate traffic transports an individual under a Federal order, travel permit, or agreement of isolation, quarantine, or conditional release, CDC may require that the operator of the conveyance submit the conveyance to inspection, sanitary measures, and other measures, as the CDC deems necessary to prevent the possible spread of communicable disease.

(d) CDC may additionally apply the provisions in paragraphs (a) through (c) of this section upon the request of a state or local health authority of jurisdiction or whenever the Director makes a determination under 42 CFR 70.2 that is based on the existence of inadequate local control such measures are needed to prevent the spread of any of the communicable diseases from such State or U.S. territory to any other State or U.S. territory.

(e) CDC may additionally apply the provisions in paragraphs (a) through (c) of this section to individuals under a state or local order, or written agreement, for quarantine, isolation, or conditional release and to conveyances that may transport such individuals, upon the request of a state or local health authority of jurisdiction or whenever the Director makes a determination of inadequate local control under 42 CFR 70.2.

(f) The CDC may exempt individuals and non-public conveyances, such as ambulances, air ambulance flights, or private vehicles, from the requirements of this section.

■ 4. Revise § 70.6 to read as follows:

§ 70.6 Apprehension and detention of persons with quarantinable communicable diseases.

CDC may authorize the apprehension, medical examination, quarantine, isolation, or conditional release of any individual for the purpose of preventing the introduction, transmission, and spread of quarantinable communicable diseases, as specified by Executive Order, based upon a finding that:

(a) The individual is reasonably believed to be infected with a quarantinable communicable disease in a qualifying stage and is moving or about to move from a state into another state; or

(b) The individual is reasonably believed to be infected with a quarantinable communicable disease in a qualifying stage and constitutes a probable source of infection to other individuals who may be moving from a state into another state.

■ 5. Add §§ 70.10 through 70.19 to read as follows:

§ 70.10 Public health prevention measures to detect communicable disease.

(a) The CDC may conduct public health prevention measures at U.S. airports, seaports, railway stations, bus terminals, and other locations where individuals may gather to engage in interstate travel, through non-invasive procedures determined appropriate by the CDC to detect the presence of communicable diseases.

(b) As part of the public health prevention measures, CDC may require individuals to provide contact information such as U.S. and foreign addresses, telephone numbers, email addresses, and other contact information, as well as information concerning their intended destination, health status, and travel history.

§ 70.11 Report of death or illness onboard aircraft operated by airline.

(a) The pilot in command of an aircraft operated on behalf of an airline who is conducting a commercial passenger flight in interstate traffic under a regular schedule shall report as soon as practicable to the CDC the occurrence onboard of any deaths or the presence of ill persons among passengers or crew and take such measures as the CDC may direct to prevent the potential spread of the communicable disease, provided that such measures do not affect the airworthiness of the aircraft or the safety of flight operations.

(b) The pilot in command of an aircraft operated on behalf of an airline who reports in accordance with paragraph (a) shall be deemed to satisfy the reporting obligation under 42 CFR 70.4.

§ 70.12 Medical examinations.

(a) The CDC may require an individual to undergo a medical examination as part of a Federal order for quarantine, isolation, or conditional release for a quarantinable communicable disease.

(b) The CDC shall promptly arrange for the medical examination to be conducted when one is required under this section.

(c) As part of the medical examination, the CDC may require an individual to provide information and undergo such testing as may be reasonably necessary to diagnose or confirm the presence or extent of infection with a quarantinable communicable disease.

(d) Individuals reasonably believed to be infected based on the results of a medical examination may be isolated, or if such results are inconclusive or unavailable, individuals may be quarantined or conditionally released in accordance with this part.

§ 70.13 Payment for care and treatment.

(a) The CDC may authorize payment for the care and treatment of individuals subject to medical examination, quarantine, isolation, and conditional release, subject to paragraphs (b) through (h) of this section.

(b) Payment for care and treatment shall be in the CDC's sole discretion and subject to the availability of appropriations.

(c) Payment shall be secondary to the obligation of the United States or any third-party (*i.e.*, any state or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay for such care and treatment, and shall be paid by the CDC only after all third-party payers have made payment in satisfaction of their obligations.

(d) Payment may include costs for providing ambulance or other medical transportation when such services are deemed necessary by the CDC for the individual's care and treatment.

(e) Payment shall be limited to those amounts the hospital, medical facility, or medical transportation service would customarily bill the Medicare system using the International Classification of Diseases, Clinical Modification (ICD–CM), and relevant regulations promulgated by the Centers for Medicare and Medicaid Services in existence at the time of billing.

(f) For quarantinable communicable diseases, payment shall be limited to costs for services and items reasonable and necessary for the care and treatment of the individual or group for the time period beginning when the CDC refers the individual or group to the hospital or medical facility and ends when, as determined by the CDC, the period of apprehension, quarantine, isolation, or conditional release expires.

(g) For diseases other than those described in paragraph (f) of this section, such payment shall be limited to costs for services and items reasonable and necessary for care and treatment of the individual for the time period that begins when the CDC refers the individual to the hospital or medical facility and ends when the individual's condition is diagnosed, as determined by the CDC, as an illness other than a quarantinable communicable disease.

(h) For ambulance or other medical transportation, payment shall be limited to the costs for such services and other items reasonable and necessary for the individual's safe medical transport.

§ 70.14 Requirements relating to the issuance of a Federal order for quarantine, isolation, or conditional release.

(a) A Federal order authorizing quarantine, isolation, or conditional release shall be in writing, signed by a CDC authorizing official, and contain the following information:

(1) The identity of the individual or group subject to the order;

(2) The location of the quarantine or isolation or, in the case of conditional release, the entity to who and means by which the individual shall report for public health supervision;

(3) An explanation of the factual basis underlying the CDC's reasonable belief that the individual is in the qualifying stage of a quarantinable communicable disease;

(4) An explanation of the factual basis underlying the CDC's reasonable belief that the individual is moving or about to move from one state into another or constitutes a probable source of infection to others who may be moving from one state into another;

(5) An explanation of the process for reassessment and medical review of the Federal order pursuant to this part; and

(6) An explanation of the criminal penalties for violating a Federal order of quarantine, isolation, or conditional release.

(b) A Federal order authorizing quarantine, isolation, or conditional release shall be promptly served on the individual, except that the Federal order may be published or posted in a conspicuous location if the Federal order is applicable to a group of individuals and individual service would be impracticable.

§ 70.15 Mandatory reassessment of a Federal order for quarantine, isolation, or conditional release.

(a) The CDC shall reassess the need to continue the quarantine, isolation, or conditional release of an individual no later than 72 hours after the service of the Federal order.

(b) As part of the reassessment, the CDC shall review all records considered in issuing the Federal order, including travel records, records evidencing exposure or infection with a quarantinable communicable disease, as well as any relevant new information.

(c) As part of the reassessment, and where applicable, the CDC shall consider whether less restrictive alternatives would adequately serve to protect the public health.

(d) At the conclusion of the reassessment, the CDC shall promptly issue a written Federal order directing that the quarantine, isolation, or conditional release be continued, modified, or rescinded.

(e) In the event that the CDC directs that the quarantine, isolation, or conditional release be continued or modified, the written Federal order shall explain the process for requesting a medical review under this part.

(f) The CDC's written Federal order shall be promptly served on the individual, except that the Federal order may be served by publication or by posting in a conspicuous location if the Federal order is applicable to a group of individuals and individual service would be impracticable.

§ 70.16 Medical review of a Federal order for quarantine, isolation, or conditional release.

(a) The CDC shall, as soon as practicable, arrange for a medical review upon a request by an individual under Federal quarantine, isolation, or conditional release.

(b) A request for a medical review may only occur after the CDC's mandatory reassessment under § 70.15 and following the issuance of a Federal order continuing or modifying the quarantine, isolation, or conditional release.

(c) The medical review shall be for the purpose of ascertaining whether the CDC has a reasonable belief that the individual is infected with a quarantinable communicable disease in a qualifying stage.

(d) The CDC shall notify the individual in writing of the time and place of the medical review.

(e) The CDC shall designate a medical reviewer to review the medical or other evidence presented at the review, make medical or other findings of fact, and issue a recommendation concerning whether the Federal order for quarantine, isolation, or conditional release should be rescinded, continued, or modified.

(f) The individual under Federal quarantine, isolation, or conditional release may authorize a representative at his or her own expense to submit medical or other evidence and, in the medical reviewer's discretion, be allowed to present a reasonable number of medical experts. The CDC shall appoint a medical representative at its own expense to assist the individual for purposes of the medical review upon a request and certification, under penalty of perjury, by that individual that he or she is indigent and cannot afford a medical representative.

(g) Prior to the convening of the review, the individual or his/her authorized representative shall be provided a reasonable opportunity, to examine the available medical and other records involved in the medical review that pertain to that individual.

(h) The CDC shall take such measures that it determines to be reasonably necessary to allow an individual under Federal quarantine or isolation to communicate with an authorized representative in such a manner as to prevent the possible spread of the quarantinable communicable disease.

(i) The medical reviewer may order a medical examination of an individual when, in the medical reviewer's professional judgment, such an examination would assist in assessing the individual's medical condition.

(j) As part of the review, and where applicable, the medical reviewer shall consider and accept into the record evidence concerning whether less restrictive alternatives would adequately serve to protect public health.

(k) In the medical reviewer's discretion, the review may be conducted through written submission, by telephone, or through any other means that the medical reviewer determines to be acceptable.

(l) At the conclusion of the review, the medical reviewer shall, based upon his or her review of the facts and other evidence made available during the medical review, issue a written report to the Director as to whether, in the medical reviewer's professional judgment, the Federal quarantine, isolation, or conditional release should be rescinded, continued, or modified. The written report shall be served on the individual and the individual's authorized representative.

(m) The Director shall, as soon as practicable, review the written report and any objections that may be submitted by the individual or the individual's authorized representative that contest the findings and recommendation contained in the medical reviewer's written report. Upon conclusion of the review, the Director shall promptly issue a written Federal order directing that the quarantine, isolation, or conditional release be continued, modified, or rescinded. In the event that the Director continues or modifies the Federal quarantine, isolation, or conditional release, the Director's written order shall include a statement that the individual may request that the CDC rescind the Federal quarantine, isolation, or conditional release, but based only on a showing of significant, new or changed facts or medical evidence that raise a genuine issue as to whether the individual should continue to be subject to Federal quarantine, isolation, or conditional release. The written Federal order shall be promptly served on the individual and the individual's authorized representative, except that the Federal order may be served by publication or by posting in a conspicuous location if applicable to a group of individuals and individual service would be impracticable.

(n) The Director's written order shall not constitute final agency action until it has been served on the individual and the individual's authorized representative, or alternatively, if applicable to a group of individuals and individual service would be impracticable, it is published or posted.

(o) The Director may order the consolidation of one or more medical reviews if the number of individuals or other factors makes the holding of individual medical reviews impracticable.

(p) The CDC may issue additional instructions as may be necessary or desirable governing the conduct of medical reviews.

§ 70.17 Administrative records relating to Federal quarantine, isolation, or conditional release.

(a) The administrative record of an individual under Federal quarantine, isolation, or conditional release shall, where applicable, consist of the following:

(1) The Federal order authorizing quarantine, isolation, or conditional release, including any subsequent Federal orders continuing or modifying the quarantine, isolation or conditional release;

(2) Records of any available medical, laboratory, or other epidemiologic information that are in the agency's possession and that were considered in issuing the Federal quarantine, isolation, or conditional release order, or any subsequent Federal orders;

(3) Records submitted by the individual under quarantine, isolation, or conditional release, or by an authorized representative, as part of a request for rescission of the Federal quarantine, isolation, or conditional release or as part of a medical review;

(4) The written findings and report of the medical reviewer, including any transcripts of the medical review and any written objections submitted by the individual under Federal quarantine, isolation, or conditional release, or by an authorized representative;

(5) Any agreements entered into between the CDC and the individual.

(b) An individual subject to a Federal public health order will upon request be served with a copy of his or her own administrative record in its entirety.

§ 70.18 Agreements.

CDC may enter into an agreement with an individual, upon such terms as the CDC considers to be reasonably necessary, indicating that the individual consents to any of the public health measures authorized under this part, including quarantine, isolation, conditional release, medical examination, hospitalization, vaccination, and treatment; provided that the individual's consent shall not be considered as a prerequisite to the exercise of any authority under this part.

§ 70.19 Penalties.

(a) Persons in violation of this part are subject to a fine of no more than $100,000 if the violation does not result in a death or one year in jail, or both, or a fine of no more than $250,000 if the violation results in a death or one year in jail, or both, or as otherwise provided by law.

(b) Violations by organizations are subject to a fine of no more than $200,000 per event if the violation does not result in a death or $500,000 per event if the violation results in a death or as otherwise provided by law.

PART 71—FOREIGN QUARANTINE

■ 6. The authority citation for part 71 continues to read as follows:

Authority: Secs. 215 and 311 of Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); secs. 361–369, PHS Act, as amended (42 U.S.C. 264–272).

■ 7. Amend § 71.1 by adding, in alphabetical order the definitions of "Agreement," "Airlines," "Apprehension," "Commander," "Conditional release," "Contaminated environment," "Electronic or Internet-based monitoring," "Ill person," "Indigent," "Master or operator," "Medical examination," "Medical representative," "Medical reviewer," "Non-invasive," and "Public health prevention measures," to read as follows:

§ 71.1 General Definitions

* * * * *

(b) * * *

Agreement means an agreement entered into between the CDC and an individual expressing a voluntary agreement between the parties that the individual will observe public health measures authorized under this part, as the CDC considers reasonably necessary to protect the public's health, including quarantine, isolation, conditional release, medical examination, hospitalization, vaccination, and treatment.

Airline(s) means any air carrier(s) or foreign air carrier(s) providing air transportation or foreign air transportation, respectively, including scheduled or public charter passenger operations operating in air commerce, as these terms are defined in 49 U.S.C. 40102,(a)(2), (a)(3), (a)(5),(a)(21), and (a)(23).

Apprehension means the temporary taking into custody of an individual or group for purposes of determining whether quarantine, isolation, or conditional release is warranted.

* * * * *

Commander means the pilot in command of an aircraft as defined in 14 CFR 1.1.

* * * * *

Conditional release means surveillance as defined under this part and includes public health supervision through in-person visits by a health official or designee, telephone, or through any electronic or internet-based means as determined by the CDC.

Contaminated environment means the presence of an infectious agent on a surface, including on inanimate articles, or in a substance, including food, water, or in the air.

* * * * *

Electronic or internet-based monitoring means mechanisms or technologies allowing for the temporary public health supervision of an individual under conditional release and may include electronic mail, SMS texts, video conference or webcam technologies, integrated voice-response systems, entry of information into a web-based forum, wearable tracking technologies, and other mechanisms or technologies as determined by the CDC.

Ill person means an individual:

(1) Who if onboard an aircraft:

(i) Has a fever (a measured temperature of 100.4 °F [38°C] or greater, or feels warm to the touch, or gives a history of feeling feverish) accompanied by one or more of the following: Skin rash, difficulty breathing, persistent cough, decreased consciousness or confusion of recent onset, new unexplained bruising or bleeding (without previous injury), persistent diarrhea, persistent vomiting (other than air sickness), headache with stiff neck, appears obviously unwell; or

(ii) Fever that has persisted for more than 48 hours; or

(iii) Has symptoms or other indications of communicable disease, as the CDC may announce through posting of a notice in the **Federal Register**.

(2) Who if onboard a vessel:

(i) Has a fever (a measured temperature of 100.4 °F [38°C] or greater; or feels warm to the touch; or gives a history of feeling feverish) accompanied by one or more of the following: Skin rash, difficulty breathing or suspected or confirmed pneumonia, persistent cough or cough with bloody sputum, decreased consciousness or confusion of recent onset, new unexplained bruising or bleeding (without previous injury), persistent vomiting (other than sea sickness), headache with stiff neck; or

(ii) Has diarrhea, defined as the occurrence in a 24-hour period of three or more loose stools or of a greater than normal (for the person) amount of loose stools; or

(iii) Has symptoms or other indications of communicable disease, as the CDC may announce through posting of a notice in the **Federal Register**.

Indigent means an individual whose annual family income is below 150% of the applicable poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2) or, if no income is earned, liquid assets totaling less than 15% of the applicable poverty guidelines.

* * * * *

Master or Operator with respect to a vessel, means the sea crew member with responsibility for vessel operation and navigation, or a similar individual with responsibility for a conveyance. Consistent with the definition of "operate" in 14 CFR 1.1, "operator" means, with respect to aircraft, any person who uses, causes to use or authorizes to use aircraft, for the purpose (except as provided in 14 CFR 91.13) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise).

Medical examination means the assessment of an individual by an authorized health worker to determine the individual's health status and potential public health risk to others and may include the taking of a medical history, a physical examination, and collection of human biological samples for laboratory testing as may be needed to diagnose or confirm the presence or extent of infection with a quarantinable communicable disease.

Medical representative means a physician, nurse practitioner, or similar medical professional qualified in the diagnosis and treatment of infectious diseases who is appointed by the HHS Secretary or CDC Director and may include an HHS or CDC employee, to assist an indigent individual under Federal quarantine, isolation, or conditional release with a medical review under this part.

Medical reviewer means a physician, nurse practitioner, or similar medical professional qualified in the diagnosis and treatment of infectious diseases who is appointed by the HHS Secretary or CDC Director to conduct medical reviews under this part and may include an HHS or CDC employee, provided that the employee differs from the CDC official who issued the Federal order for quarantine, isolation, or conditional release.

* * * * *

Non-invasive means procedures conducted by an authorized health worker or another individual with suitable training and includes the physical examination of the ear, nose, and mouth; temperature assessments using an ear, oral, cutaneous, or noncontact thermometer, or thermal imaging; auscultation; external palpation; external measurement of blood pressure; and other procedures not involving the puncture or incision of the skin or insertion of an instrument or foreign material into the body or a body cavity excluding the ear, nose and mouth.

* * * * *

Public health prevention measures means the assessment of an individual through non-invasive procedures and other means, such as observation, questioning, review of travel documents, records review, and other non-invasive means, to determine the individual's health status and potential public health risk to others.

* * * * *

■ 8. Revise § 71.2 to read as follows:

§ 71.2 Penalties.

(a) Persons in violation of this part are subject to a fine of no more than $100,000 if the violation does not result in a death or one year in jail, or both, or a fine of no more than $250,000 if the violation results in a death or one year in jail, or both, or as otherwise provided by law.

(b) Violations by organizations are subject to a fine of no more than $200,000 per event if the violation does not result in a death or $500,000 per event if the violation results in a death or as otherwise provided by law.

■ 9. Add § 71.4 to read as follows:

§ 71.4 Requirements relating to collection, storage and transmission of airline passenger, crew and flight information for public health purposes

(a) Any airline with a flight arriving into the United States, including any intermediate stops between the flight's origin and final destination, shall make the data elements in paragraph (b) of this section available to the CDC for passengers or crew who, as determined by the CDC, may be at risk of exposure to a communicable disease, to the extent that such data are already available and maintained by the airline, within 24 hours of an order by the CDC and in a format available and acceptable to both the airline and the CDC.

(b) The data elements referred to in paragraph (a) of this section include:

(1) Full name (last, first, and, if available, middle or others);

(2) Date of birth;

(3) Sex;

(4) Country of residence;

(5) If a passport is required: passport number, passport country of issuance, and passport expiration date;

(6) If a travel document other than a passport is required: Travel document type, travel document number, travel document country of issuance and travel document expiration date;

(7) Address while in the United States (number and street, city, state, and zip code), except that U.S. citizens and lawful permanent residents will provide address of permanent residence in the U.S.(number and street, city, state, and zip code);

(8) Primary contact phone number to include country code;

(9) Secondary contact phone number to include country code;

(10) Email address;

(11) Airline name;

(12) Flight number;

(13) City of departure;

(14) Departure date and time;

(15) City of arrival;

(16) Arrival date and time; and

(17) Seat number.

■ 10. Add § 71.5 to read as follows:

§ 71.5 Requirements relating to collection, storage and transmission of vessel passenger, crew, and voyage information for public health purposes

(a) The operator of any vessel carrying 13 or more passengers (excluding crew) and, which is not a ferry as defined under 46 U.S.C. 2101 and U.S. Coast Guard (USCG) regulations (46 CFR 2.10–25), shall make the data elements in paragraph (b) available to the CDC for passengers or crew who, as determined by the CDC, may be at risk of exposure to a communicable disease, to the extent that such data are already in the operator's possession, within 24 hours of an order by the CDC and in a format available and acceptable to both the operator and the CDC.

(b) The data elements referred to in paragraph (a)of this section include:

(1) Full name (last, first, and, if available middle or others);

(2) Date of birth;

(3) Sex;

(4) Country of residence;

(5) If a passport is required: passport number; passport country of issuance, and passport expiration date;

(6) If a travel document other than a passport is required: Travel document type, travel document number, travel document country of issuance and travel document expiration date;

(7) Address while in the United States (number and street, city, state, and zip code), except that U.S. citizens and lawful permanent residents will provide address of permanent residence in the United States (number and street, city, state, and zip code; as applicable);

(8) Primary contact phone number to include country code;

(9) Secondary contact phone number to include country code;

(10) Email address;

(11) Vessel operator;

(12) Vessel name;

(13) Voyage number;

(14) Embarkation port and date;

(15) Disembarkation port and date;

(16) All port stops; and

(17) Cabin number.

■ 11. Add § 71.20 to read as follows:

§ 71.20 Public health prevention measures to detect communicable disease.

(a) The CDC may conduct public health prevention measures, at U.S. ports of entry or other locations, through non-invasive procedures as defined in 42 CFR 71.1 to detect the potential presence of communicable diseases.

(b) As part of the public health prevention measures, CDC may require individuals to provide contact information such as U.S. and foreign addresses, telephone numbers, email addresses, and other contact information, as well as information concerning their intended destination, health status, and travel history.

■ 12. Add §§ 71.29 and 71.30 to read as follows:

§ 71.29 Administrative records relating to quarantine, isolation, or conditional release.

(a) The administrative record of an individual under quarantine, isolation, or conditional release shall, where applicable, consist of the following:

(1) The Federal order authorizing quarantine, isolation, or conditional release, including any subsequent Federal orders continuing or modifying the quarantine, isolation or conditional release;

(2) Records of any available medical, laboratory, or other epidemiologic information that are in the agency's possession and that were considered in issuing the Federal quarantine, isolation, or conditional release order, or any subsequent Federal orders;

(3) Records submitted by the individual under quarantine, isolation, or conditional release, or by an authorized representative, as part of a request for rescission of the quarantine, isolation, or conditional release or as part of a medical review;

(4) The written findings and report of the medical reviewer, including any transcripts of the medical review and any written objections submitted by the individual under Federal quarantine, isolation, or conditional release, or by an authorized representative;

(5) Any agreements entered into between the CDC and the individual.

(b) An individual subject to a Federal public health order will upon request be served with a copy of his or her own administrative record in its entirety.

§ 71.30 Payment for care and treatment.

(a) The CDC may authorize payment for the care and treatment of individuals subject to medical examination, quarantine, isolation, and conditional release, subject to paragraphs (b) through (h) of this section.

(b) Payment for care and treatment shall be in the CDC's sole discretion and subject to the availability of appropriations.

(c) Payment shall be secondary to the obligation of the United States or any third-party (including any state or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay for such care and treatment, and shall be paid by the CDC only after all third-party payers have made payment in satisfaction of their obligations.

(d) Payment may include costs for providing ambulance or other medical transportation when such services are deemed necessary by the CDC for the individual's care and treatment.

(e) Payment shall be limited to those amounts the hospital, medical facility, or medical transportation service would customarily bill the Medicare system using the International Classification of Diseases, Clinical Modification (ICD–CM), and relevant regulations promulgated by the Centers for Medicare and Medicaid Services in existence at the time of billing.

(f) For quarantinable communicable diseases, payment shall be limited to costs for services and items reasonable and necessary for the care and treatment of the individual for the time period beginning when the CDC refers the individual to the hospital or medical facility and ends when, as determined by the CDC, the period of apprehension, quarantine, isolation, or conditional release expires.

(g) For diseases other than those described in paragraph (f) of this section, such payment shall be limited to costs for services and items reasonable and necessary for care and treatment of the individual for the time period that begins when the CDC refers the individual to the hospital or medical facility and ends when the individual's condition is diagnosed, as determined by the CDC, as an illness other than a quarantinable communicable disease.

(h) For ambulance or other medical transportation, payment shall be limited to the costs for such services and other items reasonable and necessary for the safe medical transport of the individual.

■ 13. Amend § 71.33 by revising paragraph (c) to read as follows:

§ 71.33 Persons: Isolation and surveillance.

* * * * *

(c) Every person who is placed under surveillance by authority of this subpart shall, during the period of surveillance:

(1) Give information relative to his/her health and his/her intended destination and submit to surveillance, including electronic and internet-based monitoring as required by the CDC or by the state or local health department having jurisdiction over the areas to be visited, and report for such medical examinations as may be required.

(2) Inform the CDC prior to departing the United States or prior to traveling to any address other than that stated as the intended destination.

* * * * *

■ 14. Add §§ 71.36 through 71.40 to read as follows:

§ 71.36 Medical examinations.

(a) The CDC may require that an individual arriving into the United States undergo a medical examination as part of a Federal order for quarantine, isolation, or conditional release.

(b) The CDC shall promptly arrange for the medical examination to be conducted when one is required under this section.

(c) As part of the medical examination, the CDC may require that an individual provide information and undergo such testing as may be reasonably necessary to diagnose or confirm the presence, absence, or extent of infection with a quarantinable communicable disease.

(d) Individuals reasonably believed to be infected based on the results of a medical examination may be isolated, or if such results are inconclusive or unavailable, individuals may be quarantined or conditionally released in accordance with this part.

§ 71.37 Requirements relating to issuance of a Federal order for quarantine, isolation, or conditional release.

(a) A Federal order authorizing quarantine, isolation, or conditional release shall be in writing, signed by a CDC authorizing official, and contain the following information:

(1) The identity of the individual or group subject to the order;

(2) The location of the quarantine or isolation or, in the case of conditional release, the entity to who and means by which the individual shall report for public health supervision;

(3) An explanation of the factual basis underlying the CDC's reasonable belief that the individual is exposed to or infected with a quarantinable communicable disease;

(4) An explanation of the process for reassessment and medical review of the Federal order pursuant to this part; and

(5) An explanation of the criminal penalties for violating a Federal order of quarantine, isolation, or conditional release.

(b) A Federal order authorizing quarantine, isolation, or conditional release shall be promptly served on the individual, except that the Federal order may be published or posted in a conspicuous location if applicable to a group of individuals and individual service would be impracticable.

§ 71.38 Mandatory reassessment of a Federal order for quarantine, isolation, or conditional release (surveillance).

(a) The CDC shall reassess the need to continue the quarantine, isolation, or conditional release of an individual no later than 72 hours after the service of the Federal order.

(b) As part of the reassessment, the CDC shall review all records considered in issuing the Federal order, including travel records, records evidencing exposure or infection with a quarantinable communicable disease, as well as any relevant new information.

(c) As part of the reassessment, and where applicable, the CDC shall consider whether less restrictive alternatives would adequately serve to protect the public health.

(d) At the conclusion of the reassessment, the CDC shall promptly issue a written Federal order directing that the quarantine, isolation, or conditional release be continued, modified, or rescinded.

(e) In the event that the CDC directs that the quarantine, isolation, or conditional release be continued or modified, the written Federal order shall explain the process for requesting a medical review under this part.

(f) The CDC's written Federal order shall be promptly served on the individual, except that the Federal order may be served by publication or by posting in a conspicuous location if applicable to a group of individuals and individual service would be impracticable.

§ 71.39 Medical review of a Federal order for quarantine, isolation, or conditional release.

(a) The CDC shall, as soon as practicable, arrange for a medical review upon a request by an individual under Federal quarantine, isolation, or conditional release.

(b) A request for a medical review may only occur after the CDC's mandatory reassessment under § 71.38 and following the issuance of a Federal order continuing or modifying the quarantine, isolation, or conditional release.

(c) The medical review shall be for the purpose of ascertaining whether the CDC has a reasonable belief that the individual is infected with a quarantinable communicable disease.

(d) The CDC shall notify the individual in writing of the time and place of the medical review.

(e) The CDC shall designate a medical reviewer to review the medical or other evidence presented at the review, make medical or other findings of fact, and issue a recommendation concerning whether the Federal order for quarantine, isolation, or conditional release should be rescinded, continued, or modified.

(f) The individual subject to Federal quarantine, isolation, or conditional release may authorize a representative at his or her own expense to submit medical or other evidence and, in the medical reviewer's discretion, be allowed to present a reasonable number of medical experts. The CDC shall appoint a medical representative at its own expense to assist the individual for purposes of the medical review upon a request and certification, under penalty of perjury, by that individual that he/she is indigent and cannot afford a medical representative.

(g) Prior to the convening of the review, the individual or his/her authorized representative shall be provided a reasonable opportunity to examine the available medical and other records involved in the medical review pertaining to that individual.

(h) The CDC shall take such measures that it determines to be reasonably necessary to allow an individual under Federal quarantine or isolation to communicate with an authorized representative in such a manner as to prevent the possible spread of the quarantinable communicable disease.

(i) The medical reviewer may order a medical examination of an individual when, in the medical reviewer's professional judgment, such an examination would assist in assessing the individual's medical condition.

(j) As part of the review, and where applicable, the medical reviewer shall consider and accept into the record evidence concerning whether less restrictive alternatives would adequately serve to protect public health.

(k) In the medical reviewer's discretion, the review may be conducted through written submission, by telephone, or through any other means that the medical reviewer determines to be acceptable.

(l) At the conclusion of the review, the medical reviewer shall, based upon his or her review of the facts and other evidence made available during the medical review, issue a written report to the Director as to whether, in the medical reviewer's professional judgment, the Federal quarantine, isolation, or conditional release should continue. The written report shall be served on the individual and the individual's authorized representative.

(m) The Director shall, as soon as practicable, review the written report and any objections that may be submitted by the individual or the individual's representative that contest the findings and recommendation contained in the medical reviewer's written report. Upon conclusion of the review, the Director shall promptly issue a written Federal order directing that the quarantine, isolation, or conditional release be continued, modified, or rescinded. In the event that the Director continues or modifies the Federal quarantine, isolation, or conditional release, the Director's written order shall include a statement that the individual may request that the CDC rescind the Federal quarantine, isolation, or conditional release, but based only on a showing of significant, new or changed facts or medical evidence that raise a genuine issue as to whether the individual should continue to be subject to Federal quarantine, isolation, or conditional release. The written Federal order shall be promptly served on the individual and the individual's authorized representative, except that the Federal order may be served by publication or by posting in a conspicuous location if applicable to a group of individual's and individual service would be impracticable.

(n) The Director's written order shall not constitute final agency action until it has been served on the individual or the individual's authorized representative, or alternatively, if applicable to a group of individuals and individual service would be impracticable, it is published or posted.

(o) The Director may order the consolidation of one or more medical reviews if the number of individuals or other factors makes the holding of individual medical reviews impracticable.

(p) The CDC may issue additional instructions as may be necessary or desirable governing the conduct of medical reviews.

§ 71.40 Agreements.

CDC may enter into an agreement with an individual, upon such terms as the CDC considers to be reasonably necessary, indicating that the individual consents to any of the public health measures authorized under this part, including quarantine, isolation, conditional release, medical examination, hospitalization, vaccination, and treatment; provided that the individual's consent shall not be considered as a prerequisite to any exercise of any authority under this part.

■ 15. Add § 71.63 to read as follows:

§ 71.63 Suspension of entry of animals, articles, or things from designated foreign countries and places into the United States.

(a) The CDC may suspend the entry into the United States of animals, articles, or things from designated foreign countries (including political subdivisions and regions thereof) or places whenever the Director determines that such an action is necessary to protect the public health and upon a finding that:

(1) There exists in a foreign country (including one or more political subdivisions and regions thereof) or place a communicable disease the introduction, transmission, or spread of which would threaten the public health of the United States; and

(2) The entry of imports from that country or place increases the risk that the communicable disease may be introduced, transmitted, or spread into the United States.

(b) The Director shall designate the foreign countries or places and the period of time or conditions under which the introduction of imports into the United States shall be suspended. HHS/CDC will coordinate in advance with other Federal agencies that have overlapping authority in the regulation of entry of animals, articles, or other things, as may be necessary to implement and enforce this provision.

Dated: July 12, 2016.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2016–18103 Filed 8–12–16; 8:45 am]

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Part III

Bureau of Consumer Financial Protection

12 CFR Part 1026

Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z); Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2016–0038]

RIN 3170–AA61

Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing various amendments to Federal mortgage disclosure requirements under the Real Estate Settlement Procedures Act and the Truth in Lending Act that are implemented in Regulation Z. The proposed amendments memorialize the Bureau's informal guidance on various issues and include clarifications and technical amendments. The Bureau is also proposing tolerance provisions for the total of payments, an adjustment to a partial exemption mainly affecting housing finance agencies and nonprofits, extension of coverage of the integrated disclosure requirements to all cooperative units, and guidance on sharing the disclosures with various parties involved in the mortgage origination process.

DATES: Comments must be received on or before October 18, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2016–0038 or RIN 3170–AA61, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2016–0038 or RIN 3170–AA61 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Jeffrey Haywood, Paralegal Specialist, Dania Ayoubi, Pedro De Oliveira, David Friend, Jaclyn Maier, and Alexandra Reimelt, Counsels, and Nicholas Hluchyj, Senior Counsel, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at 202–435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

For more than 30 years, Federal law required lenders to issue two overlapping sets of disclosures to consumers applying for a mortgage. In October 2015, integrated disclosures issued by the Consumer Financial Protection Bureau, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, took effect.[1] The Bureau has worked actively to support implementation both before and after the effective date by providing compliance guides, webinars, and other implementation aids.

To further these ongoing efforts, the Bureau is now proposing to memorialize certain past informal guidance, whether issued through webinar, compliance guide, or otherwise, and make additional clarifications and technical amendments. The Bureau is not proposing to reopen major policy decisions with this rulemaking but is proposing a few more substantive changes in a limited number of situations in which the Bureau has identified potential discrete solutions to specific implementation challenges. The Bureau expects that the proposal would generally benefit consumers and industry alike by providing greater clarity for implementation going forward.

Among other changes, the proposal would:

- *Create tolerances for the total of payments.* The Truth in Lending Act establishes certain tolerances for accuracy in calculating the finance charge and disclosures affected by the finance charge. In light of changes to certain underlying regulatory definitions, the Bureau believes it would be helpful to establish express tolerances for the total of payments to parallel the existing provisions regarding the finance charge.
- *Adjust a partial exemption that mainly affects housing finance agencies and nonprofits.* The existing rule provides a partial exemption for certain non-interest bearing subordinate lien transactions that provide down payment and other homeowner assistance (housing assistance loans). The Bureau has learned that the exemption may not be operating as intended. The Bureau is proposing two amendments to expand the reach of the partial exemption.
- *Provide a uniform rule regarding application of the integrated mortgage disclosure requirements to cooperative units.* Under the existing rule, coverage of cooperative units depends on whether cooperatives are classified as real property under State law. Because State law sometimes treats cooperatives differently for different purposes, there may be uncertainty and potential inconsistency among market actors. The Bureau is proposing to require provision of the integrated disclosures in transactions involving cooperative units, whether or not cooperatives are classified under State law as real property.
- *Provide guidance on sharing disclosures with various parties involved in the mortgage origination process.* The Bureau has received a number of requests for guidance concerning the sharing of disclosures with sellers and various other parties, including real estate agents, involved in the origination process in light of privacy concerns. The Bureau is proposing to incorporate and expand upon previous webinar guidance in the Official Interpretations (commentary) to the regulation to provide greater clarity.

The more minor changes and technical corrections address a variety of topics, including: Affiliate charges; the calculating cash to close table; construction loans; decimal places and rounding; escrow account disclosures; escrow cancellation notices; expiration dates for the closing costs disclosed on the Loan Estimate; gift funds; the "In 5 Years" calculation; lender and seller credits; lenders' and settlement agents' respective responsibilities; the list of service providers; model forms; non-obligor consumers; partial payment policy disclosures; payment ranges on the projected payments table; the payoffs and payments table; payoffs with a purchase loan; post-consummation fees; principal reduction (principal curtailment); disclosure and good-faith determination of property taxes and property value; rate locks; recording fees; simultaneous second lien loans; the summaries of transactions table; the total interest percentage calculation; trusts; and informational updates to the disclosures required by § 1026.19(e)(1)(i) (Loan Estimate).

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 2007, 2103–04, 2107–09 (2010); Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 FR 79730 (Dec. 31, 2013).

II. Background

A. The TILA–RESPA Integrated Disclosures Rulemaking

For more than 30 years, TILA required creditors to give consumers who applied for consumer credit, including mortgage loans, one set of disclosures, while RESPA required settlement agents to give borrowers who obtained federally related mortgage loans a different, overlapping, set of disclosures. This duplication was long recognized as inefficient and unduly complex for both consumers and industry and fueled more than one effort over the years to develop combined disclosure forms. In 1998, the Board of Governors of the Federal Reserve System (the Board) and the Department of Housing and Urban Development (HUD) prepared a joint report as to how the two sets of disclosures could be streamlined and simplified.[2]

In Dodd-Frank Act sections 1032(f), 1098, and 1100A, Congress directed the Bureau to integrate the mortgage loan disclosures under TILA and RESPA.[3] The Bureau undertook significant stakeholder outreach and consumer testing as it developed the proposal.[4] That work included researching how consumers interact with and understand information, testing of prototype disclosures, developing interactive online tools to gather public feedback (which ultimately garnered more than 27,000 individual comments on the prototype disclosures), and hosting roundtable discussions, teleconferences, and meetings with consumer advocacy groups, industry representatives, and government agencies. In addition to more conventional outreach to industry stakeholders, the Bureau conducted testing with industry participants, as well as consumers.[5] The Bureau also convened a Small Business Review Panel to solicit input from representatives of small entities.

The Bureau's 2012 proposal to integrate the TILA and RESPA disclosures (the 2012 TILA–RESPA Proposal) built from this extensive early outreach and research.[6] That proposal was animated by three primary goals: First, to consolidate the overlapping forms to reduce burden on creditors and facilitate compliance; second, to develop clear disclosures that help consumers understand the credit transaction and closing costs; and, third, to facilitate comparison shopping so that consumers could more readily choose mortgages that are right for them.

The Bureau received over 2,800 comments on its proposal from a wide range of interested parties.[7] In addition to considering all of the comments provided, the Bureau conducted additional qualitative testing of the disclosures, qualitative testing of the Spanish language translations of the disclosures, and a large-scale quantitative study.[8] In the quantitative study, respondents were able to answer questions about a hypothetical loan's features with statistically significant greater accuracy when using the new disclosures as compared to the existing disclosures.[9]

After consideration of the comments, the testing results, and the quantitative study, on November 20, 2013, the Bureau issued a final rule titled "Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)" (TILA–RESPA Final Rule).[10] The rule included a number of model forms, 13 samples illustrating the use of those forms for different types of loans, and extensive Official Interpretations, which provided authoritative guidance explaining the new disclosures. The Bureau used its discretion to establish an initial effective date of August 1, 2015, slightly more than 20 months after the rule itself was issued.[11] The Bureau ultimately extended that effective date another two months, to October 3, 2015, in a subsequent rulemaking.[12] The Bureau has reaffirmed continuously its commitment to support a smooth transition for the mortgage market, including its commitment to be sensitive to the efforts made by institutions to come into compliance.[13]

The Bureau has made technical corrections to the TILA–RESPA Final Rule. On January 20, 2015, the Bureau issued the "Amendments to the 2013

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[2] Bd. of Governors of the Fed. Reserve Sys. & U.S. Dep't. of Housing and Urban Dev., Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act (1998), available at *https://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf.* The report was prepared at Congress's direction in the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Public Law 104–208, § 2101, 110 Stat. 3009.

[3] Public Law 111–203, 124 Stat. 1376, 2007, 2103–04, 2107–09 (2010).

[4] 78 FR 79730, 79742–744 (Dec. 31, 2013).

[5] 78 FR 79730, 79743 (Dec. 31, 2013).

[6] 77 FR 51116 (Aug, 23, 2012).

[7] The TILA–RESPA Final Rule notes that commenters included "consumer advocacy groups; national, State, and regional industry trade associations; banks; community banks; credit unions; financial companies; mortgage brokers; title insurance underwriters; title insurance agents and companies; settlement agents; escrow agents; law firms; document software companies; loan origination software companies; appraisal management companies; appraisers; State housing finance authorities; counseling associations and intermediaries; State attorneys general; associations of State financial services regulators; State bar associations; government sponsored enterprises (GSEs); a member of the U.S. Congress; the Committee on Small Business of the U.S. House of Representatives; Federal agencies, including the staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission (FTC staff), and the Office of Advocacy of the Small Business Administration (SBA); and individual consumers and academics." 78 FR 79730, 79745 (Dec. 31, 2013).

[8] 78 FR 79730, 79746–750 (Dec. 31, 2013).

[9] Kleimann Comm. Group, *Know Before You Owe: Quantitative Study of the Current and Integrated TILA–RESPA Disclosures* (2013), *available at http://files.consumerfinance.gov/f/201311_cfpb_study_tila-respa_disclosure-comparison.pdf.*

[10] 77 FR 51116 (Aug. 23, 2012) (2012 TILA–RESPA Proposal); 78 FR 79730 (Dec. 31, 2013) (TILA–RESPA Final Rule); *see also* Consumer Fin. Prot. Bureau, *CFPB Proposes "Know Before You Owe" Mortgage Forms* (July 9, 2012), *http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-proposes-know-before-you-owe-mortgage-forms/;* Consumer Fin. Prot. Bureau, *Know Before You Owe: Introducing Our Proposed Mortgage Disclosure Forms,* CFPB Blog (July 9, 2012), *http://www.consumerfinance.gov/blog/know-before-you-owe-introducing-our-proposed-mortgage-disclosure-forms/.*

[11] Most commenters supported an implementation period between 18 and 24 months. 78 FR 79730, 80071 (Dec. 31, 2013).

[12] 80 FR 43911 (July 24, 2015). An administrative error on the Bureau's part required the Bureau to extend the effective date to August 15, 2015, at the earliest. The Bureau extended the effective date an additional six weeks to minimize costs from the delay to both consumers and industry.

[13] *See, e.g.,* Letter from Director Richard Cordray, CFPB, to Industry Trades (April 28, 2015); Letter from Director Richard Cordray, CFPB, to Representatives Andy Barr and Carolyn B. Maloney, U.S. House of Representatives (June 3, 2015). Both Fannie Mae and Freddie Mac have issued statements indicating that they are not conducting routine post-purchase reviews during the transitional period after the effective date. *See, e.g.,* Fannie Mae, Lender Letter LL–2015–06 (Oct. 6, 2015), *available at https://www.fanniemae.com/content/announcement/ll1506.pdf;* Freddie Mac, Industry Letter (Oct. 6, 2015), *available at http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/iltr100615.pdf.*

Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)" final rule (January 2015 Amendments).[14] On July 21, 2015, the Bureau issued the "2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and Amendments; Delay of Effective Date" final rule (July 2015 Amendments), which made certain technical amendments as well as extending the effective date.[15] The TILA–RESPA Final Rule, January 2015 Amendments, and July 2015 Amendments are collectively referred to as the TILA–RESPA Rule in this proposal.

While implementation has posed challenges to industry, industry reports indicate that implementation is now proceeding more smoothly.[16] Data published by one leading provider of loan origination services and survey research conducted by a major trade association confirm these observations.[17] Moreover, a recent homebuyer survey by another trade association suggests that the new disclosures are, indeed, helping consumers understand their loan terms.[18] The Loan Estimate and the disclosures required by § 1026.19(f)(1)(i) (Closing Disclosure) have been praised by many as improvements to the existing forms.[19]

B. Implementation Support

The Bureau has engaged in extensive efforts to support industry implementation of the TILA–RESPA Rule. Information regarding the Bureau's implementation support initiative and available implementation resources can be found on the Bureau's regulatory implementation Web site at *www.consumerfinance.gov/regulatory-implementation/tila-respa*. The Bureau's ongoing efforts in this area include: (1) The publication of a small entity compliance guide and a guide to forms to help industry understand the new rules, including updates to the guides, as needed; (2) the publication of a readiness guide for institutions to evaluate their readiness and facilitate compliance with the new rules; (3) the publication of a disclosure timeline that illustrates the process and timing requirements of the new disclosure rules; (4) the publication of the Bureau's own examination procedures, incorporating the Federal Financial Institutions Examination Council's exam procedures; (5) the publication of Loan Estimate and Closing Disclosure forms with fields annotated to show certain TILA disclosure citations; (6) a series of webinars to address common interpretive questions, including an index of questions answered during those webinars; (7) the issuance of the January 2015 and July 2015 Amendments, as well as a February 2016 **Federal Register** erratum notice; (8) the creation of a Web page targeted to real estate professionals and their questions; (9) roundtable meetings with industry, including creditors, settlement service providers, technology vendors, and secondary market participants, to discuss their challenges and support their implementation efforts; (10) participation in numerous conferences and forums throughout the entire implementation period; (11) close collaboration with State and Federal regulators on implementation of the TILA–RESPA Final Rule, including coordination on consistent examination procedures; and (12) extensive informal guidance to support implementation of the TILA–RESPA Rule.

C. Purpose and Scope of Proposal

The intent of this proposal is to integrate some of the Bureau's existing informal guidance, whether provided through webinar, compliance guide, or otherwise, into the regulation text and commentary of Regulation Z where appropriate. In addition, the Bureau is proposing to revise portions of the regulation text and commentary where revisions would be useful for greater certainty and clarity.

The Bureau's focus is thus providing additional clarity to facilitate compliance and doing so on an expedited schedule. While the Bureau has proposed a handful of substantive changes where it has identified a potential discrete solution to a specific implementation challenge, the Bureau does not intend to revisit major policy decisions in this rulemaking. The Bureau is reluctant to entertain major changes that could involve substantial reprogramming of systems so soon after the October 2015 effective date or to otherwise distract from industry's intense and very productive efforts to resolve outstanding implementation issues.

Accordingly, the proposal does not and cannot address every concern that has been raised to the Bureau. The Bureau believes that industry has made substantial implementation progress even in the last few months while drafting of the proposal was underway. The Bureau is prioritizing its resources to further facilitate industry's implementation progress. Therefore, the Bureau is not proposing any revisions that implicate fundamental policy choices, such as the disclosure of simultaneous issuance title insurance premiums, made in the TILA–RESPA Final Rule. The Bureau is also not proposing additional cure provisions.

The Bureau has spent substantial time considering industry requests to define further procedures for curing errors made in Loan Estimates or Closing Disclosures. The Bureau has worked steadily with industry to explain the cure provisions adopted in the TILA–RESPA Final Rule as well as TILA's existing provisions for cure. The Bureau is concerned that further definition of cure provisions would not be practicable without substantially undermining incentives for compliance with the rule. The Bureau believes that further defining cure provisions would be extraordinarily complex. Accordingly, the Bureau is focusing this rulemaking process on facilitating compliance with the TILA–RESPA Rule in an expeditious manner so that all consumers receive disclosures that conform to the requirements of the rule.

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[14] 80 FR 8767 (Feb. 19, 2015). The January 2015 Amendments finalized a proposal the Bureau had issued on October 10, 2014, 79 FR 64336 (Oct. 29, 2014).

[15] 80 FR 43911 (July 24, 2015). The July 2015 Amendments finalized a proposal the Bureau had issued on June 24, 2015, 80 FR 36727 (June 26, 2015).

[16] *See, e.g.*, Brena Swanson,*"Ellie Mae CEO: Initial discomfort of TRID now over, Time to close finally tumbles,"* Housingwire, March 21, 2016, *available at http://www.housingwire.com/articles/36563-ellie-mae-ceo-initial-discomfort-of-trid-now-over; Ken Frears, "TRID: Back on Track in June," National Association of Realtors, July 12, 2016 available at http://economistsoutlook.blogs.realtor.org/2016/07/12/trid-back-on-track-in-june/*.

[17] *See* Ellie Mae, *Origination Insight Report* (May, 2016), *available at http://www.elliemae.com/origination-insight-reports/Ellie_Mae_OIR_MAY2016.pdf;* National Association of Realtors®, *Survey of Mortgage Originators, First Quarter 2016: TRID after 6 Months and Changes to FHA's Cancellation Policy, available at http://www.realtor.org/reports/survey-of-mortgage-originators-first-quarter-2016*.

[18] Press Release, American Land Title Association, "American Land Title Association Survey Shows More Homebuyers Reviewing Mortgage Disclosures," May 16, 2016, *http://www.alta.org/press/release.cfm?r=260*.

[19] *Brian Honea, "How Satisfied are Borrowers with the Origination Process?,"* The M Report (July 13, 2016). available at *http://www.themreport.com/news/origination/07-13-2016/how-satisfied-are-borrowers-with-the-origination-process;* "STRATMOR:TRID Is Boosting Customer Satisfaction," March 29, 2016, *available at http://www.mortgageorb.com/stratmor-trid-is-boosting-customer-satisfaction*; "New ClosingCorp Survey Gauges Early Consumer Reaction to New Real Estate/Mortgage Rules," Businesswire (March 15, 2016), *available at http://www.businesswire.com/news/home/20160315005228/en/ClosingCorp-Survey-Gauges-Early-Consumer-Reaction-Real;* Trey Garrison, "Here's how TRID is changing the mortgage industry," Housingwire (October 12, 2015), *available at http://www.housingwire.com/articles/print/35319-heres-how-trid-is-changing-the-mortgage-industry*.

III. Legal Authority

The Bureau is issuing this proposal pursuant to its authority under TILA, RESPA, and the Dodd-Frank Act, including the authorities discussed below. In general, the provisions this proposal would amend were previously adopted by the Bureau in the TILA–RESPA Final Rule. In doing so, the Bureau relied on one or more of the authorities discussed below. Except as otherwise noted in the section-by-section analysis in part V below, the Bureau is issuing this proposal in reliance on the same authority and for the same reasons relied on in adopting the relevant provisions of the TILA–RESPA Rule, which are described in detail in the Legal Authority and Section-by-Section Analysis parts of the TILA–RESPA Final-Rule and January 2015 Amendments, respectively.[20]

A. The Integrated Disclosure Mandate

Section 1032(f) of the Dodd-Frank Act required the Bureau to propose, for public comment, rules and model disclosures combining the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determined that any proposal issued by the Board and HUD carried out the same purpose.[21] In addition, the Dodd-Frank Act amended section 105(b) of TILA and section 4(a) of RESPA to require the integration of the TILA disclosures and the disclosures required by sections 4 and 5 of RESPA.[22] The purpose of the integrated disclosure is to facilitate compliance with the disclosure requirements of TILA and RESPA and to improve borrower understanding of the transaction.

Although Congress imposed the requirement to integrate the disclosures, it did not harmonize the underlying statutes. TILA and RESPA establish different timing requirements for disclosing mortgage credit terms and costs to consumers and require that those disclosures be provided by different parties. TILA section 128(b)(2)(A) generally requires that, within three business days of receiving the consumer's application and at least seven business days before consummation of certain mortgage transactions, creditors must provide consumers a good faith estimate of the costs of credit.[23] If the annual percentage rate that was initially disclosed becomes inaccurate, TILA section 128(b)(2)(D) requires creditors to redisclose the information at least three business days before consummation.[24] Pursuant to TILA section 128(b)(2)(B)(ii), the disclosures must be provided in final form at consummation.[25] RESPA section 5(c) also requires that the lender or broker provide borrowers with a good faith estimate of settlement charges no later than three business days after receiving their applications.[26] However, unlike TILA, RESPA section 4(b) requires that, at or before settlement, the person conducting the settlement (which may not be the creditor) provide the borrower with a statement that records all charges imposed upon the borrower in connection with the settlement.[27]

B. Other Rulemaking and Exception Authorities

Truth in Lending Act

TILA section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a),[28] directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various available credit terms and avoid the uninformed use of credit.[29] In enacting TILA, Congress found that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.[30] Strengthened competition among financial institutions is a goal of TILA, achieved through the meaningful disclosure of credit terms.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. Dodd-Frank Act section 1100A amended TILA section 105(a) to provide the Bureau express authority to prescribe regulations that contain additional requirements that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the Bureau's authority under TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute. The Dodd-Frank Act also clarified the Bureau's rulemaking authority over certain high-cost mortgages pursuant to section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, including the high-cost mortgages referred to in TILA section 103(bb), except with respect to the provisions of TILA section 129 that apply uniquely to such high-cost mortgages.[31]

TILA section 129B(e). Dodd-Frank Act section 1405(a) amended TILA to add new section 129B(e).[32] That section authorizes the Bureau to prohibit or condition terms, acts, or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary, or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of sections 129B and 129C of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower. In developing rules under TILA section 129B(e), the Bureau has considered whether the rules are in the interest of the borrower, as required by the statute. The Bureau is proposing portions of this rule pursuant to its authority under TILA section 129B(e).

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[20] 78 FR 79730, 79753–56 (Dec. 31, 2013); 80 FR 8767, 8768–70 (Feb. 19, 2015).

[21] Public Law 111–203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(f)).

[22] Section 1100A of the Dodd-Frank Act amended TILA section 105(b) to provide that the "Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law." Public Law 111–203, 124 Stat. 1376, 2108 (2010) (codified at 15 U.S.C. 1604(b)). Section 1098 of the Dodd-Frank amended RESPA section 4(a) to require the Bureau to publish a "single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law." Public Law 111–203, 124 Stat. 1376, 2103 (2010) (codified at 12 U.S.C. 2603(a)).

[23] 15 U.S.C. 1638(b)(2)(A). This requirement applies to extensions of credit that are both secured by a dwelling and subject to RESPA. *Id.*

[24] 15 U.S.C. 1638(b)(2)(D).

[25] 15 U.S.C. 1638(b)(2)(B)(ii).

[26] 12 U.S.C. 2604(c).

[27] 12 U.S.C. 2603(b).

[28] 15 U.S.C. 1604(a).

[29] 15 U.S.C. 1601(a).

[30] *Id.*

[31] 15 U.S.C. 1639. TILA section 129 contains requirements for certain high-cost mortgages, established by the Home Ownership and Equity Protection Act (HOEPA), which are commonly called HOEPA loans.

[32] Public Law 111–203, 124 Stat. 1376, 2141 (2010) (codified at 15 U.S.C. 1639B(e)).

Real Estate Settlement Procedures Act

Section 19(a) of RESPA authorizes the Bureau to prescribe such rules and regulations and to make such interpretations and grant such reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of RESPA.[33] One purpose of RESPA is to effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs.[34] In addition, in enacting RESPA, Congress found that consumers are entitled to greater and more timely information on the nature and costs of the settlement process and to be protected from unnecessarily high settlement charges caused by certain abusive practices in some areas of the country.[35] In the past, RESPA section 19(a) has served as a broad source of authority to prescribe disclosures and substantive requirements to carry out the purposes of RESPA.

In developing rules under RESPA section 19(a), the Bureau has considered the purposes of RESPA, including to effect certain changes in the settlement process that will result in more effective advance disclosure of settlement costs. The Bureau is proposing portions of this rule pursuant to its authority under RESPA section 19(a).

Dodd-Frank Act

Dodd-Frank Act section 1022(b). Under Dodd-Frank Act section 1022(b)(1), the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof.[36] TILA and RESPA are Federal consumer financial laws.[37] Accordingly, in proposing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules under TILA, RESPA, and title X of the Dodd-Frank Act that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).[38]

Dodd-Frank Act section 1032. Section 1032(a) of the Dodd-Frank Act provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.[39] The authority granted to the Bureau in section 1032(a) is broad and empowers the Bureau to prescribe rules regarding the disclosure of the features of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.[40] Accordingly, in developing the TILA–RESPA Rule under Dodd-Frank Act section 1032(a), the Bureau considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. Moreover, the Bureau has considered the evidence developed through its consumer testing of the integrated disclosures as well as prior testing done by the Board and HUD regarding TILA and RESPA disclosures. See part III of the TILA–RESPA Final Rule for a discussion of the Bureau's consumer testing.[41] The Bureau is proposing portions of this rule pursuant to its authority under Dodd-Frank Act section 1032(a).

Dodd-Frank Act section 1405(b). Section 1405(b) of the Dodd-Frank Act provides that, notwithstanding any other provision of title XIV of the Dodd-Frank Act, in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Bureau may exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Bureau determines that such exemption or modification is in the interest of consumers and in the public interest.[42] Section 1401 of the Dodd-Frank Act, which amends TILA section 103(cc)(5), generally defines a residential mortgage loan as any consumer credit transaction that is secured by a mortgage on a dwelling or on residential real property that includes a dwelling, other than an open-end credit plan or an extension of credit secured by a consumer's interest in a timeshare plan.[43] Notably, the authority granted by section 1405(b) applies to disclosure requirements generally and is not limited to a specific statute or statutes. Accordingly, Dodd-Frank Act section 1405(b) is a broad source of authority to exempt from or modify the disclosure requirements of TILA and RESPA.

In developing rules for residential mortgage loans under Dodd-Frank Act section 1405(b), the Bureau has considered the purposes of improving consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures and the interests of consumers and the public. The Bureau is proposing portions of this rule pursuant to its authority under Dodd-Frank Act section 1405(b).

IV. Proposed Implementation Period

The Bureau seeks comment on when the changes proposed herein should be effective. The Bureau believes that these changes should enable industry to implement the TILA–RESPA Rule more cost-effectively and that industry should be able implement these changes relatively quickly. At the same time, the Bureau recognizes that some of the proposed changes might require changes to systems or procedures. The Bureau specifically requests that technology vendors, creditors, mortgage brokers, settlement agents, and other entities affected by the proposal provide details on any required updates to software and systems and other measures that would be necessary to implement the proposed changes. The Bureau also specifically requests details on the amount of time needed to make specific changes and the time to make all proposed changes in the aggregate.

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[33] 12 U.S.C. 2617(a).

[34] 12 U.S.C. 2601(b).

[35] 12 U.S.C. 2601(a).

[36] Public Law 111–203, 124 Stat. 1376, 1980 (2010) (codified at 15 U.S.C. 5512(b)(1)).

[37] 12 U.S.C. 5481(12) and (14).

[38] Public Law 111–203, 124 Stat. 1376, 1980 (2010) (codified at 12 U.S.C. 5512(b)(2)).

[39] Public Law 111–203, 124 Stat. 1376, 2006–07 (2010) (codified at 12 U.S.C. 5532(a)).

[40] Public Law 111–203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(c)).

[41] 78 FR 79730, 79743–50 (Dec. 31, 2013).

[42] Public Law 111–203, 124 Stat. 1376, 2142 (2010) (codified at 15 U.S.C. 1601 note).

[43] Public Law 111–203, 124 Stat. 1376, 2138 (2010) (codified at 15 U.S.C. 1602(cc)(5)).

The Bureau proposes an effective date 120 days after publication in the **Federal Register** of any final rule based on this proposal and seeks comment on the same. The Bureau also welcomes comment on whether there is a better or worse time of year for any of the changes proposed herein to become effective. The Bureau seeks comment on whether specific changes, as detailed in the section-by-section analysis in part V below, should have a separate effective date and, if so, whether it should be earlier or later than the general effective date and why. Finally, as discussed more fully in the section-by-section analysis of § 1026.1(d)(5), the Bureau is proposing revisions to comment 1(d)(5)–1 that would make mandatory, after a period of six months or more following promulgation of a final rule, certain post-consummation disclosures for transactions with an application date before October 3, 2015.

V. Section-by-Section Analysis

Section 1026.1 Authority, Purpose, Coverage, Organization, Enforcement, and Liability

1(d) Organization

1(d)(5)

As detailed in the section-by-section analysis of § 1026.19, the Bureau is proposing to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law. The Bureau is proposing conforming amendments to § 1026.1(d)(5) to reflect this proposed change to the coverage of § 1026.19(e) and (f).

Comment 1(d)(5)–1 explains that the Bureau's revisions to Regulation X and Regulation Z in the TILA–RESPA Final Rule apply to covered loans for which the creditor or mortgage broker receives an application on or after October 3, 2015 (the "effective date"), except that § 1026.19(e)(2), § 1026.28(a)(1), and the commentary to § 1026.29 became effective on October 3, 2015, without respect to whether an application was received. The Bureau is proposing to modify comment 1(d)(5)–1 in three ways. First, the Bureau is proposing to restructure the comment and make other clarifying and technical revisions. Second, the Bureau is proposing revisions to conform with proposed revisions to § 1026.19(e) and (f) as discussed in relation to the edits to § 1026.1(d)(5) above. Third, the Bureau is proposing language to require a creditor, servicer, or covered person, as applicable, to provide the disclosures required by § 1026.20(e) or § 1026.39(d)(5), for transactions in which the conditions in these provisions, as applicable, exist on or after October 1, 2017, regardless of when a corresponding application was received. The proposed amendments to the comment also would set forth an illustrative example.

With regard to the third modification, the Bureau understands that there is uncertainty whether the disclosures in §§ 1026.20(e) and 1026.39(d)(5) (together, the post-consummation disclosures) apply to all covered transactions as of the effective date or only to covered transactions for which the creditor or mortgage broker received an application on or after October 3, 2015. The Bureau considers either approach compliant under existing comment 1(d)(5)–1. The Bureau is proposing to clarify that the post-consummation disclosure requirements apply to all covered transactions. To avoid unfair surprise to creditors that have observed the requirements only for transactions for which an application was received on or after October 3, 2015, however, the Bureau is proposing to provide in comment 1(d)(5)–1 that the post-consummation disclosures apply prospectively to transactions for which an application was received prior to October 3, 2015. Specifically, proposed comment 1(d)(5)–1 would state that the post-consummation disclosures take effect for such transactions on October 1, 2017.

The October 1, 2017, effective date in proposed comment 1(d)(5)–1 reflects the Bureau's working assumption expectation that the final rule under this proposal, at least to the extent of the proposed revisions to comment 1(d)(5)–1, will be promulgated on or before April 1, 2017. The Bureau therefore is tentatively proposing this date in accordance with TILA section 105(d), which provides that any regulation of the Bureau that requires a disclosure that differs from the previously required disclosure generally shall take effect on that October 1 which follows by at least six months the date of promulgation. The Bureau's expectation concerning the date of a final rule is a working assumption at this time. Accordingly, the effective date recited in proposed comment 1(d)(5)–1 for the post-consummation disclosures for transactions for which an application was received prior to October 3, 2015, may differ in the final rule, depending on when it is adopted.

The Bureau believes that consumers with covered mortgage loans would benefit from the receipt of the post-consummation disclosures without regard to when a corresponding application was received. The information contained in the post-consummation disclosures, about escrow account closure and partial payment policies of a new owner of the mortgage loan, is beneficial regardless of when the consumer applied for the loan. Moreover, there is no necessary relationship between the disclosures made under § 1026.19(e) and (f) and the post-consummation disclosures; consumers should be able to understand the latter even if they have not received the former.

The Bureau also believes that requiring the post-consummation disclosures for covered transactions without regard to the application date would simplify compliance. For example, § 1026.20(e) recognizes that servicers may provide the post-consummation escrow disclosure notice, in connection with servicing the mortgage loan account, but servicers may have no other reason to track the application date. Providing the required notice on all covered accounts regardless of application date may simplify servicers' compliance. Similarly, the post-consummation partial payment disclosure required by § 1026.39(d)(5) is incorporated into the mortgage transfer disclosures that are provided upon transfer of ownership of any covered loan, without regard to application date. If § 1026.39(d)(5) is effective without regard to application date, covered persons under § 1026.39 can provide a standard disclosure to all mortgage loans rather than two distinct disclosures, depending on the loan's application date.

The Bureau is seeking comment on whether making the applicability of the post-consummation disclosures to all covered transactions regardless of when an application was received is appropriate and any information about current industry practice and whether these notices are provided on all transactions that met the conditions set forth in §§ 1026.20(e) and 1026.39(d), respectively, or only transactions for which the application was received on or after October 3, 2015. The Bureau also seeks comment on how often escrow accounts are canceled post-consummation, whether the rate of escrow cancelations is expected to remain static or change, and the burden of tracking the application date for these two post-consummation disclosures.

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(11) Consumer

Comments 2(a)(11)–3 and 3(a)–10 discuss when the extension of credit to trusts is covered by TILA. Comment 2(a)(11)–3 clarifies that credit extended to land trusts is considered to be extended to a consumer for purposes of the definition of consumer in § 1026.2(a)(11). Comment 3(a)–10 states that credit extended for consumer purposes to land trusts and trusts that a consumer has created for tax or estate planning purposes is considered to be credit extended to a natural person rather than credit extended to an organization.

The Bureau proposes to amend comment 2(a)(11)–3 to clarify that, in addition to credit extended to land trusts, credit extended to trusts established for tax or estate planning purposes is also considered to be extended to a natural person for purposes of the definition of consumer in § 1026.2(a)(11), consistent with comment 3(a)–10.

Section 1026.3 Exempt Transactions

3(h) Partial Exemption for Certain Mortgage Loans

Section 1026.3(h) provides that the TILA–RESPA integrated disclosure requirements do not apply to a transaction if: (1) the transaction is secured by a subordinate lien; (2) the transaction's purpose is to finance down payment, closing costs, or similar homebuyer assistance, such as principal or interest subsidies; property rehabilitation assistance; energy efficiency assistance; or foreclosure avoidance or prevention; (3) the credit contract does not require the payment of interest; (4) the credit contract provides that repayment of the amount of credit extended is forgiven either incrementally or in whole, at a date certain, and subject only to specified ownership and occupancy conditions, or deferred for a minimum of 20 years after consummation of the transaction, until the sale of the property securing the transaction, or until the property securing the transaction is no longer the principal dwelling of the consumer; (5) the total of costs payable by the consumer at consummation is less than 1 percent of the amount of credit extended and includes no charges other than fees for recordation, application, and housing counseling; and (6) the creditor complies with all other applicable Regulation Z requirements in connection with the transaction, including providing the disclosures required by § 1026.18. If the six criteria in § 1026.3(h) are satisfied, a creditor is not required to provide the Loan Estimate, Closing Disclosure, or special information booklet in connection with the mortgage loan. The creditor must, however, provide the disclosures required by § 1026.18, ensuring that the consumer receives TILA disclosures of the cost of credit. As discussed in more detail below, the Bureau is proposing to revise § 1026.3(h) to clarify that transfer taxes may be payable by the consumer at consummation without losing eligibility for the partial exemption and to exclude recording fees and transfer taxes from the 1-percent threshold of total costs payable by the consumer at consummation.

Regulation X § 1024.5(d) provides a partial exemption from certain RESPA disclosure requirements for federally related mortgage loans[44] that meet the criteria set forth in § 1026.3(h). Specifically, Regulation X § 1024.5(d) provides that lenders[45] are exempt from the RESPA settlement cost booklet, RESPA Good Faith Estimate, RESPA settlement statement (HUD–1), and application servicing disclosure statement requirements of §§ 1024.6 through 1024.8, 1024.10, and 1024.33(a) (the RESPA disclosures) for a federally related mortgage loan: (1) That is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, § 1026.19(e), (f), and (g); or (2) that satisfies the criteria in Regulation Z, § 1026.3(h). Thus, a lender on a federally related mortgage loan must provide the RESPA disclosures unless (1) the loan is a covered transaction for purposes of the TILA–RESPA integrated disclosures; or (2) the transaction meets the partial exemption in § 1026.3(h). Where a federally related mortgage loan is not a covered transaction subject to the special disclosures at § 1026.19(e), (f), and (g), for example, because it imposes no finance charge and is payable in four or fewer installments and thus does not meet one of Regulation Z's coverage criteria in § 1026.1(c)(1)(iii), and also does not satisfy the criteria in § 1026.3(h), the lender must continue to provide the RESPA disclosures. Even if a lender chooses to provide the TILA–RESPA integrated disclosures voluntarily, because those disclosures are not required for the transaction, the loan is not eligible for the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2).

As discussed in the 2012 TILA–RESPA Proposal, the partial exemption in § 1026.3(h) and the parallel partial exemption in Regulation X § 1024.5(d) are designed to codify a disclosure exemption previously granted by HUD.[46] The purpose of these partial exemptions is to permit creditors to provide streamlined disclosures for certain low-cost, non-interest bearing subordinate lien transactions. The Bureau understands that the disclosures required under § 1026.18 are comparatively less burdensome to complete than either the TILA–RESPA integrated disclosures or the RESPA disclosures. Moreover, for the low-cost, non-interest bearing subordinate loans that satisfy the criteria at § 1026.3(h), the Bureau believes the disclosures required by § 1026.18 would be relatively straightforward to calculate, as loans that would qualify for the partial exemption would likely have minimal finance charges (by the terms of the partial exemption, only a certain limited set of fees may be charged and no interest may be charged). By reducing the procedural burden associated with the disclosures required for these transactions, the Bureau intended to enable creditors to make more housing assistance loans available for low- and moderate-income consumers.

The Bureau believes that transactions that satisfy the criteria at § 1026.3(h) generally provide a benefit to consumers and pose very little risk of consumer harm. These loans often provide consumers funds that could be directly applied against the first lien, in the case of down payment assistance, or towards closing costs associated with the first lien (these loans may also be made for other purposes, such as energy efficiency improvements). They are not interest bearing, repayment is deferred or contingent, and only a certain limited set of fees may be charged the consumer. The Bureau understands additionally that the amount of these loans is relatively small, typically between $2,500 and $10,000.

Moreover, the Bureau understands that loans that satisfy the criteria at § 1026.3(h) are predominantly made by housing finance agencies (HFAs) or by private creditors who partner with

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[44] 12 CFR 1024.2(b) (defining federally related mortgage loan for purposes of Regulation X).

[45] Note that RESPA and TILA differ in their terminology. Whereas Regulation X generally refers to "lenders" and "borrowers," Regulation Z generally refers to "creditors" and "consumers." This Supplementary Information uses "lenders" and "borrowers" in its discussion of Regulation X and the RESPA disclosures and "creditors" and "consumers" in its discussion of Regulation Z, the TILA–RESPA integrated disclosures, and the partial exemptions generally.

[46] 77 FR 51115, 51138 (Aug. 23, 2012).

HFAs and extend credit pursuant to HFA guidelines. The Bureau has previously explained that HFAs are quasi-governmental entities, chartered by either a State or a municipality, that engage in diverse housing financing activities for the promotion of affordable housing and that HFAs promote affordable homeownership through activities such as subordinate-loan financing and down payment assistance programs (*e.g.,* a loan to the consumer to assist with the consumer's down payment, or to pay for some of the closing costs).[47] The Bureau has further explained its understanding that HFA lending is characterized by low-cost financing, evaluation of a consumer's repayment ability, and homeownership counseling.[48]

Many of the low-cost housing assistance loans made by HFAs or pursuant to HFA guidelines are not covered transactions subject to the special disclosures at § 1026.19(e), (f), and (g) because they are neither subject to a finance charge nor payable in more than four installments, as required by the coverage test in § 1026.1(c)(1).[49] These loans generally are, however, federally related mortgage loans. Thus, unless they qualify for the partial exemption in § 1026.3(h), cross-referenced in Regulation X § 1024.5(d)(2), creditors making these housing assistance loans may be required to provide the RESPA disclosures.

The Bureau has received information that many HFAs are having difficulty finding lenders to partner with in making these loans. Following the introduction of the TILA–RESPA integrated disclosures, some vendors and loan originator systems no longer support the RESPA disclosures. Although the RESPA disclosures are still required for other loan types, such as reverse mortgages, many lenders do not offer such products, and those lenders that do offer such products often do so through separate divisions that do not engage with, or operate on separate systems that do not support, housing assistance loan programs. As a result, many lenders, or at least the relevant divisions of many lenders, may no longer have the capacity to issue the RESPA disclosures. Several HFAs have reported to the Bureau that they have begun completing the RESPA disclosures manually, which is cumbersome and may increase errors. The Bureau is concerned that the limited support for the RESPA disclosures may make it difficult for HFAs, other nonprofits, and private lenders to make housing assistance loans available to low- and moderate-income borrowers if they are not able to take advantage of the partial exemption in § 1026.3(h).

Since the publication of the TILA–RESPA Rule, the Bureau has received information from one trade association representing HFAs, numerous State and local HFAs, and other nonprofit organizations indicating that many creditors are having difficulty satisfying the criteria for the partial exemption set forth in § 1026.3(h) when making housing assistance loans. In particular, the Bureau has received information that housing assistance loans most often fail to meet the partial exemption because the total costs payable by the consumer at consummation exceed the 1-percent threshold in current § 1026.3(h)(5). The Bureau understands that, due in part to the relatively small size of these loans, the fees for recordation charged by State and local governments often exceed the 1-percent threshold on costs payable by the consumer at consummation.

The Bureau is concerned that the current 1-percent limit on the total of costs payable by the consumer at consummation in § 1026.3(h)(5) may be overly restrictive, given the comparatively small size of these loans and information that transfer tax and recording fees have increased in recent years. For example, one HFA has reported that its average down payment assistance loan amount is $2,500. In the State in which this HFA operates, there is a base fee of $14 and a housing trust fund fee of $14 for recording the first two pages of the mortgage, with an additional $4 base fee and $4 housing trust fund fee charged for each subsequent page. This HFA has informed the Bureau that the mortgage is usually at least three pages. As a result, fees for recording the mortgage routinely come to at least $36, which is more than the 1-percent of costs payable at consummation for this HFA's average housing assistance loan size of $2,500. Another HFA has explained to the Bureau that it offers an interest-free deferred payment loan program with a maximum loan amount of $5,500. The State in which this HFA operates charges a tax for recording a mortgage in the amount of 0.23 percent of the debt that is secured by the mortgage loan, which amounts to a $12.65 tax on a $5,500 loan. This State also permits county recorders to charge a $46 fee for indexing and recording deeds or other instruments, including mortgages. Ten counties in this State impose an additional $5 fee per transaction on the recording or registration of a mortgage loan or deed. Thus, a $5,500 loan could be subject to $63.65 in government taxes and fees for recording the mortgage, which again is more than 1-percent of the total costs payable by the consumer at consummation.

Accordingly, the Bureau believes that clarifying that transfer taxes may be payable in connection with such transactions without losing eligibility for the partial exemption and excluding recording fees and transfer taxes, which are costs inherent to the transaction and not imposed by the creditor, from the 1-percent threshold would enable more loans to satisfy the criteria in § 1026.3(h). This would facilitate access to the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d), and would support extensions of beneficial low-cost credit to borrowers.

Current § 1026.3(h)(5)(i) lists fees for recordation of security instruments, deeds, and similar documents as among the permissible fees for loans qualifying for the § 1026.3(h) partial exemption. The Bureau proposes to clarify that, for the purposes of this partial exemption, fees for recordation of security instruments, deeds, and similar documents include transfer taxes. Comments 37(g)(1)–1 and 37(g)(1)–3 explain what recording fees and transfer taxes are, respectively. As comment 37(g)(1)–3 explains, transfer taxes are generally based on the loan amount or sales price, but 37(g)(1)–1 notes that recording fees are typically assessed based on the type of document to be recorded or its physical characteristics, such as number of pages.

The Bureau believes that all government fees associated with recording the mortgage loan, deed, and similar documents should be permissible fees for purposes of the § 1026.3(h) partial exemption, whether assessed with regard to the loan amount or sales price or the document recorded. These fees and taxes are not determined or imposed by the creditor in the transaction. Additionally, the impact of these fees on the cost of the transaction may be further reduced as the Bureau understands that, in some instances, housing assistance loans may be exempted from transfer taxes. The Bureau proposes to revise § 1026.3(h)(5) to permit expressly both recording fees and transfer taxes, which are defined terms under Regulation Z. The Bureau believes this proposed revision may increase use of the § 1026.3(h) partial exemption, which could relieve concerns associated with the required provision of the RESPA disclosures for certain transactions that currently do not satisfy § 1026.3(h) and could benefit borrowers through expanded access to low-cost housing assistance loans. The Bureau seeks comment on any risks associated with expressly permitting recording fees and transfer taxes to be charged in connection with loans that satisfy § 1026.3(h) and whether any additional fees should be permitted for such loans.

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[47] 78 FR 6855, 6886 (January 10, 2014) (High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)).

[48] *Id.*

[49] Section 1026.1(c)(1) provides that, in general, Regulation Z applies to each individual or business that offers or extends credit, other than a person excluded from coverage by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, when four conditions are met: (i) The credit is offered or extended to consumers; (ii) The offering or extension of credit is done regularly; (iii) The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (iv) The credit is primarily for personal, family, or household purposes.

The Bureau proposes to redesignate and revise § 1026.3(h)(5) as § 1026.3(h)(5)(i) to provide that the costs payable by the consumer in connection with the transaction at consummation are limited to: (A) Recording fees; (B) transfer taxes; (C) a bona fide and reasonable application fee; and (D) a bona fide and reasonable fee for housing counseling services. The Bureau proposes to revise § 1026.3(h)(5)(ii) to require that the total of costs payable by the consumer under § 1026.3(h)(5)(i)(C) and (D) be less than 1 percent of the amount of credit extended. Under proposed § 1026.3(h)(5)(ii), the application and housing counseling fees would count towards the 1-percent threshold, but recording fees and transfer taxes would not. The Bureau solicits comment on these revisions to § 1026.3(h)(5) and seeks information related to the average amount of housing assistance loans, the fees generally charged in connection with these loans, and the average amounts of these fees.

The Bureau recognizes that the proposal to exclude recording fees and transfer taxes from the 1-percent threshold may allow for an increase in the costs associated with loans that satisfy the criteria at § 1026.3(h). The Bureau believes that the risk of consumer abuse through overcharging of recording fees and transfer taxes is slight. These fees are required by State and local laws and not imposed by the creditor in the transaction. To the extent these fees vary by transaction and are not uniformly levied, they may be reduced for loans that provide down payment or other homeowner assistance. The Bureau believes it unlikely that State and local jurisdictions would target the low-cost housing assistance loans that qualify for the § 1026.3(h) partial exemption for increases in recording fees and transfer taxes. Nonetheless, the Bureau seeks comment on whether broadening the scope of the partial exemption through the proposed exclusion of recording fees and transfer taxes from the 1-percent threshold would increase the potential for abuse or risk of other consumer harm. The Bureau also seeks comment on whether, in light of the proposed changes, 1-percent would continue to be the appropriate threshold on costs.

The Bureau also recognizes that removing recording fees and transfer taxes from the 1-percent limit could reduce downward pressure on application and housing counseling fees and potentially result in these fees becoming an increased source of revenue for creditors making these loans. The Bureau seeks comment, therefore, on potential areas for abuse regarding housing assistance programs and additional restrictions to ensure that loans eligible for the § 1026.3(h) partial exemption pose minimal risks to consumers. The Bureau similarly seeks comment on whether requiring that the credit contract not require the payment of a finance charge as defined in § 1026.4, except as expressly permitted under § 1026.3(h)(5), would reduce the potential for abuse or evasion in housing assistance programs and improve clarity. The Bureau solicits comment generally on whether there are alternative approaches to address concerns over the ability of housing assistance loans to satisfy § 1026.3(h)(5) and the required provision of the RESPA disclosures for certain federally related mortgage loans that do not meet the criteria for the § 1026.3(h) partial exemption.

Although the Bureau understands that loans eligible for the § 1026.3(h) partial exemption are primarily made by HFAs or by private creditors who partner with HFAs and extend credit pursuant to HFA guidelines, nothing in § 1026.3(h) limits the availability of the partial exemption to loans made by HFAs or creditors working with those entities. The Bureau seeks comment on whether it should make such a limitation explicit in § 1026.3(h). The Bureau notes that § 1026.32, which sets forth requirements for high-cost mortgages, exempts transactions from coverage where the HFA is a creditor for the transaction. The Bureau seeks comment on whether § 1026.3(h) should be similarly revised to exempt transactions originated by an HFA from the disclosure requirements in § 1026.19(e), (f), and (g), or to completely exempt such transactions from Regulation Z requirements altogether, without regard to the criteria set forth in § 1026.3(h). If such an exemption for HFAs were appropriate, the Bureau solicits information on the defining characteristics of an HFA for purposes of these exemptions and whether such exemption should be in whole or in part. The Bureau seeks comment on how such an exemption from the requirements of Regulation Z for a loan originated by an HFA should intersect with the RESPA disclosures under Regulation X.

In light of the proposed amendments to § 1026.3(h)(5), the Bureau proposes revisions to comment 3(h)–2. Current comment 3(h)–2 explains, in relevant part, that the creditor must have information reflecting that the total of closing costs imposed in connection with the transaction is less than 1 percent of the amount of credit extended and include no charges other than recordation, application, and housing counseling fees, in accordance with § 1026.3(h)(5). The Bureau proposes conforming changes to comment 3(h)–2 to reflect the proposed revisions to § 1026.3(h)(5).

The Bureau also proposes to add new comments 3(h)–3 and –4 in light of the proposed references to recording fees in § 1026.3(h)(5)(i)(A) and transfer taxes in § 1026.3(h)(5)(i)(B). Proposed comment 3(h)–3 would include a cross reference to comment 37(g)(1)–1, which explains what constitutes recording fees for purposes of Regulation Z. Proposed comment 3(h)–4 would include a cross reference to comment 37(g)(1)–3, which explains what constitutes transfer taxes for purposes of Regulation Z. Adding these cross references in commentary would increase clarity as to whether certain fees are permissible charges under proposed § 1026.3(h)(5)(i)(A) and (B).

Legal Authority

The Bureau believes that the proposed modifications to the § 1026.3(h) partial exemption would further facilitate compliance with TILA and RESPA, consistent with the Bureau's authority under TILA section 105(a) and RESPA section 19(a). TILA section 105(a) authorizes the Bureau to adjust or except from the disclosure requirements of TILA all or any class of transactions to facilitate compliance with TILA. As set forth above, revising the criteria for the § 1026.3(h) partial exemption would facilitate compliance by enabling more housing assistance loans to qualify for the partial exemption at § 1026.3(h) and reducing regulatory burden for a class of transactions that the Bureau believes generally benefit consumers and pose little risk of consumer harm. RESPA section 19(a) authorizes the Bureau to grant reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA. This amendment would enable more federally related mortgage loans to qualify for the partial exemption at § 1024.5(d)(2) and permit lenders to provide the streamlined disclosures under § 1026.18 for these low-cost, non-interest bearing, subordinate-lien transactions.

In addition, the Bureau believes that the special disclosure requirements that covered persons must meet to qualify for the § 1026.3(h) partial exemption would help ensure that the features of these mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with these mortgage transactions, consistent with Dodd-Frank Act section 1032(a).

Section 1026.17 General Disclosure Requirements

17(c) Basis of Disclosures and Use of Estimates

17(c)(6)

Allocation of Costs

Comment 17(c)(6)–5 permits a creditor, when using the special rule under § 1026.17(c)(6), to disclose certain construction-permanent transactions as multiple transactions, to allocate buyer's points or similar amounts imposed on the consumer between the construction and permanent phases of the transaction in any manner the creditor chooses. The Bureau is proposing to amend comment 17(c)(6)–5 to provide greater clarity by adding a ''but for'' test to allocate amounts to the construction phase.

Creditors have expressed uncertainty as to the scope of the allocations currently permitted under comment 17(c)(6)–5. Statutory and regulatory changes since the comment was adopted further complicate reasonable interpretations of comment 17(c)(6)–5. For example, the construction phase of a construction-permanent loan is excluded from coverage of § 1026.32 for high-cost mortgages and § 1026.35 for higher-priced mortgage loans, but the permanent phase may be a covered loan under both §§ 1026.32 and 1026.35. Comment 17(c)(6)–5 does not provide guidance on how to allocate amounts so as to avoid violating TILA section 129(r), which prohibits structuring a loan transaction or dividing any loan transaction into separate parts for the purpose of evading the high-cost mortgage provisions.

To help ensure consumer protections are not evaded and to assist creditors in properly disclosing construction-permanent loans, the Bureau is proposing to amend comment 17(c)(6)–5 to provide greater clarity on the allocation of amounts between the construction and permanent phases if a creditor chooses to disclose the credit extended as more than one transaction. The revised comment would explain that the creditor must allocate to the construction phase all amounts that would not be imposed but for the construction financing. All other amounts would be allocated to the permanent financing, including both all amounts that would not be imposed but for the permanent financing and all amounts that are not imposed exclusively because of the construction financing. The Bureau believes that this explanation provides a rational and workable method for allocating and disclosing amounts in construction-permanent loans. The Bureau also believes that applying the comment to all amounts will alleviate creditors' uncertainty as to the comment's scope. The amended comment would illustrate how the allocation would be made, using inspection and handling fees for the staged disbursement of construction loan proceeds as an example. The revised comment would also provide examples of how to allocate origination and application fees between the construction phase and the permanent phase.

The Bureau is making this proposal pursuant to its general rulemaking, exception, and exemption authorities under TILA section 105(a) and section 1032(a) of the Dodd-Frank Act. The Bureau proposes the aforementioned amendments pursuant to its authority under TILA section 105(a) to effectuate the purposes of TILA and Regulation Z, prevent circumvention or evasion, as discussed above, and facilitate compliance with the statute. The Bureau believes this amendment effectuates the purposes of TILA under TILA section 102(a), because it would ensure meaningful disclosure of credit terms to consumers and facilitate compliance with the statute. In addition, consistent with section 1032(a) of the Dodd-Frank Act, this amendment would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

The Bureau requests comment on this proposed revision of comment 17(c)(6)–5. In particular, the Bureau requests comment on whether the proposal presents a clear and understandable method of allocating costs between the construction phase and the permanent phase, whether there are fees that may not be clearly allocated to one phase or the other, and whether the proposed revision would improve or obscure consumer understanding and promote or discourage comparison shopping.

May Be Permanently Financed by the Same Creditor

The Bureau proposes to add new comment 17(c)(6)–6 to clarify the meaning of the ''may be permanently financed by the same creditor'' condition specified in § 1026.17(c)(6)(ii) that, if satisfied, permits a creditor to treat a construction-permanent loan as one transaction or more than one transaction. Proposed comment 17(c)(6)–6 would explain that a loan to finance the construction of a dwelling may be permanently financed by the same creditor, within the meaning of § 1026.17(c)(6)(ii), if the creditor generally makes both construction and permanent financing available to qualifying consumers, unless a consumer expressly states that the consumer will not obtain permanent financing from the creditor. Under this approach, the construction phase may be permanently financed by the same creditor, within the meaning of § 1026.17(c)(6)(ii), in all cases other than where permanent financing is not available at all from the creditor (*i.e.,* the creditor does not offer permanent financing) or the consumer expressly informs the creditor that the consumer will not be obtaining permanent financing from the creditor. The Bureau expects that, especially at the early stages of an application when the Loan Estimate is delivered, creditors usually would not yet have made a determination as to whether they will provide permanent financing to any given consumer. Moreover, the Bureau recognizes that any such determination may be subject to change and defining when the creditor has made such a determination could be complex. Consequently, the Bureau does not believe it is appropriate to determine whether a creditor ''may'' provide permanent financing based on the creditor's actual determination as to any individual consumer. The comment would look instead to whether the creditor generally makes permanent financing available to consumers to determine whether the creditor ''may'' make permanent financing available, subject only to the consumer's express statement that the consumer will not obtain permanent financing from the creditor.

The Bureau does not believe that a construction loan reasonably may be permanently financed by the same creditor, within the meaning of the regulation, if a consumer expressly states that the consumer will not obtain permanent financing from the creditor. In such cases, the Bureau believes that a Loan Estimate provided to the consumer that treats the construction and permanent phases as a single transaction would undermine the Loan Estimate's purpose and impede the consumer's ability to comparison shop. Therefore, the Bureau is proposing to specify that, when a consumer expressly states that the consumer will not obtain permanent financing from the creditor, the permanent financing does not meet the condition that it "may be permanently financed by the same creditor" for purposes of § 1026.17(c)(6).

This proposed clarification of the meaning of "may be permanently financed by the same creditor" aligns with proposed comment 19(e)(1)(iii)–5, discussed below. That comment provides that a creditor determines the timing requirements for providing the Loan Estimate for both the construction and permanent financing based on when the application for the construction financing is received, so long as the creditor "may" provide the permanent financing. The creditor may still make the disclosures as a single transaction or as more than one transaction, as provided by § 1026.17(c)(6)(ii).

The Bureau is making this proposal pursuant to its authority under TILA section 105(a). The Bureau believes the greater clarity provided by proposed comment 17(c)(6)–6 as to what loans are eligible for the special treatment under § 1026.17(c)(6)(ii) would facilitate compliance with TILA.

The Bureau recognizes that determining whether a creditor may provide permanent financing based on a consumer's express statement could complicate the determination of whether the creditor has the option of treating a construction-permanent loan as one transaction or more than one transaction. For example, a consumer may, after initially stating that permanent financing will not be obtained from the creditor and receiving a Loan Estimate on that basis, subsequently inquire with the creditor about permanent financing. At that point, a creditor, having already issued a Loan Estimate for the construction financing only, may be precluded from disclosing the construction phase and permanent phase as one transaction. Therefore, the Bureau solicits comment on whether the condition that a construction loan may be permanently financed by the same creditor should be considered satisfied even if a consumer expressly states that the consumer will not seek permanent financing from the creditor, as long as the creditor generally makes permanent financing available to qualifying consumers. The Bureau also seeks comment on how the complexities described above might appropriately be addressed if the Bureau adopts the proposal as final, and on any additional complexities that may be presented by the proposal and how those might be addressed.

17(f) Early Disclosures

As detailed in the section-by-section analysis of § 1026.19, the Bureau is proposing to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law. The Bureau is proposing conforming amendments to comments 17(f)–1 and –2, to reflect this proposed change to the coverage of § 1026.19(e) and (f).

Section 1026.18 Content of Disclosures

As detailed in the section-by-section analysis of § 1026.19, the Bureau is proposing to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law. The Bureau is proposing conforming amendments to comments 18–3, 18(g)–6, and 18(s)–1 and –4 to reflect this proposed change to the coverage of § 1026.19(e) and (f).

Section 1026.19 Certain Mortgage and Variable-Rate Transactions

Cooperatives

The TILA–RESPA Rule, including § 1026.19(e) and (f), generally applies to closed-end consumer credit transactions secured by real property, other than reverse mortgages. Regulation Z does not define the term "real property," but § 1026.2(b)(3) states that, unless defined in Regulation Z, the words used therein have the meanings given to them by State law or contract. Thus, whether the TILA–RESPA Rule applies to a given transaction turns, at least in part, on whether the collateral securing it is considered real property under applicable State or other applicable law, which has given rise to questions about the coverage of transactions secured by cooperative units.

The Bureau understands that there is uncertainty whether loans secured by cooperative units are considered, under a given State's law and thus for purposes of the TILA–RESPA Rule's coverage, to be secured by real property or personal property. In a typical housing cooperative, a cooperative association owns all of the real property. Each cooperative member owns a share of the cooperative association and has a proprietary lease for the member's housing unit.[50] Cooperatives differ from condominiums, as condominiums typically vest ownership of the real property directly in unit owners (rather than in an association).[51] Cooperative ownership can be construed as ownership by the consumer of stock in the cooperative association (or some similar form of intangible personal property) or as ownership of real property. Whether ownership of a share in a cooperative association is treated as personal or real property can vary from State to State and even within a State. In at least some States, ownership of a share in a cooperative association is treated as personal property for some purposes and real property for other purposes.[52] If State law is not definitive whether cooperative units are real property or personal property, creditors may be unsure whether loans secured by cooperative units are covered by the TILA–RESPA Rule. Consequently, creditors may be inconsistent in the disclosures they provide on loans secured by cooperative units, impeding the ability of consumers to comparison shop. The Bureau, therefore, is proposing to amend the TILA–RESPA Rule to cover closed-end consumer credit transactions, other than reverse mortgages, secured by cooperative units.

RESPA and TILA each generally cover loans secured by cooperative units. For example, RESPA includes cooperatives within the definition of federally related mortgage loan.[53] TILA's Regulation Z[54] includes cooperatives within the § 1026.2(a)(19) definition of dwelling.[55]

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[50] *See generally* National Conference of Commissioners on Uniform State Laws, *Real Estate Cooperative Summary, http://www.uniformlaws.org/ActSummary.aspx?title=Real%20Estate%20Cooperative.*

[51] *Id.*

[52] For example, under New Jersey law, cooperative ownership constitutes a true 'hybrid' form of property that does not readily fall within traditional notions of either realty or personalty, although the cooperative owned interests are treated like real estate in most circumstances. *Drew Associates of N.J., L.P.* v. *Travisano,* 122 N.J. 249, 584 A.2d 807 (1991).

[53] 12 U.S.C. 2602(1).

[54] *See* § 1026.19(e) and (f).

However, unlike much of the rest of Regulation Z, the TILA–RESPA Rule does not use the term "dwelling" as a trigger for coverage. As stated in the TILA–RESPA Final Rule preamble, the Bureau believed that many parts of the integrated disclosures would be inapplicable to transactions secured by personal property.[56] Thus, the TILA–RESPA Final Rule used the phrase "real estate" instead of the term "dwelling" as a trigger for coverage. The Bureau did not anticipate the ensuing level of uncertainty whether loans secured by cooperative units are considered to be secured by real property or personal property under a given State's law.

To resolve stakeholders' uncertainty, and consistent with RESPA's definition of federally related mortgage loan, the Bureau proposes to amend Regulation Z, including § 1026.19(e), (f), and (g) and comments 19(e)(1)(i)–1 and –2, 19(f)(1)(i)–1 and 19(f)(3)(ii)–3, to cover closed-end consumer credit transactions secured by cooperative units, regardless of whether State or other applicable law considers cooperative units to be real or personal property. The Bureau is proposing this amendment pursuant to its authority under Dodd-Frank Act section 1032(a) and (f), TILA section 105(a), and RESPA section 19(a). Section 1032(f) of the Dodd-Frank Act required that the Bureau propose for public comment rules and model disclosures combining the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws,[57] and, as discussed above, RESPA and TILA each generally cover loans secured by cooperative units.

The Bureau believes that applying the TILA–RESPA Rule to cover closed-end consumer loans secured by cooperative units is consistent not only with both TILA and RESPA but also with general industry practice. Consequently, the Bureau believes that this extension of coverage would facilitate compliance by industry, which is one of the purposes of TILA. Furthermore, because this proposed amendment would ensure that more consumers receive the integrated disclosures, which the Bureau believes, based on its extensive testing of the disclosures, to be superior to the pre-existing TILA and RESPA disclosures and because the Bureau believes that the integrated disclosures are generally effective for transactions secured by cooperative units, whether or not the cooperative unit is treated as real property under State or other applicable law, the Bureau also believes this proposed amendment would carry out the purposes of TILA and RESPA to promote the informed use of credit and more effective advance disclosure of settlement costs, respectively. In addition, the Bureau believes the integrated disclosure requirements improve consumer understanding of the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a).

19(e) Mortgage Loans—Early Disclosures

19(e)(1) Provision of Disclosures

19(e)(1)(iii) Timing

Section 1026.19(e)(1)(iii) sets forth the timing requirements for providing the Loan Estimate. Generally, the creditor must deliver the Loan Estimate or place it in the mail not later than the third business day after the creditor receives the consumer's application and not later than the seventh business day before consummation. Section 1026.17(c)(6)(ii) provides that, when a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and permanent phase may be treated as either one transaction or more than one transaction. Comment 17(c)(6)–2 explains that, if the consumer is obligated on both phases of such construction-permanent financing and the creditor chooses to give two sets of disclosures, both sets must be given to the consumer initially because both transactions would be consummated at that time. Proposed comment 19(e)(1)(iii)–5 would explain how the timing requirements apply in the case of construction-permanent loans.

Proposed new comment 19(e)(1)(iii)–5 summarizes the relevant provisions for construction-permanent loans of §§ 1026.17(c)(6)(ii) and 1026.19(e)(1)(iii), and comment 17(c)(6)–2. Proposed comment 19(e)(1)(iii)–5 would also reference proposed comment 17(c)(6)–6, which would explain that a loan to finance the construction of a dwelling meets the condition that it "may be permanently financed by the same creditor" if the creditor generally makes both construction and permanent financing available to qualifying consumers, unless the consumer expressly states that the consumer will not obtain permanent financing from the creditor. Proposed comment 19(e)(1)(iii)–5 would then explain that, therefore, a creditor that generally makes both construction and permanent financing available, upon receiving a consumer's application for either construction financing only, without the consumer expressly stating that the consumer will not obtain permanent financing from the creditor, or combined construction-permanent financing, complies with § 1026.19(e)(1)(iii) by delivering or placing in the mail the disclosures required by § 1026.19(e)(1)(i) for both the construction financing and the permanent financing, either disclosed as one or more than one transaction, not later than the third business day after the creditor receives the application and not later than the seventh business day before consummation.

Proposed comment 19(e)(1)(iii)–5.i through –5.iv provides illustrative examples of how the Loan Estimate timing provisions apply to construction-permanent loans. Proposed comment 19(e)(1)(iii)–5.v would explain that if a consumer expressly states that the consumer will not obtain permanent financing from the creditor after a combined construction-permanent financing disclosure already has been provided, the creditor complies with § 1026.17(c)(6)(ii) by issuing a revised disclosure for construction financing only in accordance with the timing requirements of § 1026.19(e)(4).

The Bureau considered proposing that a creditor provide the Loan Estimate only for the financing for which a consumer applies. If a consumer applied for construction financing only, a creditor would be required to provide the Loan Estimate for only the construction financing. If the construction financing may be permanently financed by the same creditor, the creditor would be permitted to provide the Loan Estimate for the permanent financing at the same time as the Loan Estimate was provided for the construction financing but would not be required to do so. If the consumer applied for construction and permanent financing at the same time, the creditor would be required to provide the Loan Estimates for both phases within three days of receiving the application. If the consumer applied for construction and permanent financing separately, the creditor would be required to provide Loan Estimates within three days of receipt for each application. However, a Loan Estimate for the separately-applied-for permanent phase would not be required if the Loan Estimate for the permanent phase had already been provided because the transaction met the condition that the construction phase may be permanently financed by the same creditor. This alternative approach could create significantly more complexity in the Loan Estimate timing requirements. Nonetheless, the Bureau seeks comment on which of the alternatives described, or another alternative, would better promote consumer understanding and facilitate compliance.

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[55] *See also* 15 U.S.C. 1602(w) (TILA definition of "dwelling"). TILA applies generally to consumer credit transactions of all kinds, regardless of whether secured by residential real property. *See* 15 U.S.C. 1602(f) (credit defined as the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment).

[56] 78 FR 79730, 79796 (Dec. 31, 2013).

[57] Public Law 111–203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(f)).

The Bureau is making this proposal pursuant to its general rulemaking, exception, and exemption authorities under TILA section 105(a) and section 1032(a) of the Dodd-Frank Act. The Bureau proposes the aforementioned amendments pursuant to its authority under TILA section 105(a) to effectuate the purposes of TILA and Regulation Z and facilitate compliance with the statute. The Bureau believes this amendment effectuates the purposes of TILA under TILA section 102(a) because it would ensure meaningful disclosure of credit terms to consumers and facilitate compliance with the statute by clarifying when particular disclosures must be provided. In addition, consistent with section 1032(a) of the Dodd-Frank Act, this adjustment would promote the full, accurate, and effective disclosure of the features of consumer credit transactions secured by real property in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

19(e)(1)(vi) Shopping for Settlement Service Providers

Section 1026.19(e)(1)(vi) defines how a creditor permits a consumer to shop for services and requires the creditor to identify the services the consumer may shop for and provide a written list identifying available providers of those services. The Bureau is proposing revisions to comments 19(e)(1)(vi)–2, –3, and –4. Comments 19(e)(1)(vi)–2 and –4 are discussed together, immediately following, because the revisions relate to how a creditor identifies available services and providers for purposes of compliance with § 1026.19(e)(1)(vi). The proposed revisions to comment 19(e)(1)(vi)–3 concern how the creditor provides the written list and are discussed after comments 19(e)(1)(vi)–2 and –4.

Identifying Services and Available Providers

Comment 19(e)(1)(vi)–2 notes that the content and format of disclosure of services for which the consumer may shop can be found at § 1026.37(f)(3). Proposed revised comment 19(e)(1)(vi)–2 would also clarify that, if the charge for a particular service for which the consumer is permitted to shop is payable by the consumer, the creditor must specifically identify that service unless, based on the best information reasonably available, the creditor knows that the service is provided as part of a package (or combination of settlement services) offered by a single service provider. Proposed revised comment 19(e)(1)(vi)–2 would also further clarify that specific identification of each service in such a package is not required provided that all such services are services for which the consumer is permitted to shop.

Comment 19(e)(1)(vi)–4 provides clarification concerning the identification of settlement service providers available to the consumer, including providing sufficient information to contact the disclosed service providers. Proposed revised comment 19(e)(1)(vi)–4 would also clarify that, if the charge for a particular service for which the consumer is permitted to shop is payable by the consumer, the creditor must specifically identify that service and an available provider of that service on the written list of providers unless, based on the best information reasonably available, the creditor knows that the service is provided as part of a package (or combination of settlement services) offered by a single service provider. Proposed revised comment 19(e)(1)(vi)–4 would also further clarify that specific identification of each service in such a package is not required provided they all are services for which the consumer is permitted to shop.

Methods of Providing Settlement Service Providers List

Comment 19(e)(vi)–3 references form H–27 for a model list of the written list of providers. The Bureau understands there is uncertainty whether compliance with § 1026.19(e)(1)(vi)(C) requires use of form H–27(A). Unlike the model forms for the Loan Estimate and the Closing Disclosure,[58] which, under §§ 1026.37(o)(3) and 1026.38(t)(3), respectively, are mandatory forms for a transaction that is a federally related mortgage loan (as defined in Regulation X), form H–27(A) is not a mandatory form. Moreover, TILA section 105(b) permits creditors to delete non-required information or rearrange the format of a model form without losing the safe harbor protection afforded by use of the model form if, in making such deletion or rearranging the format, the creditor does not affect the substance, clarity, or meaningful sequence of the disclosure. Accordingly, the proposed revision to comment 19(e)(1)(vi)–3 would clarify that, although use of the model form H–27(A) of appendix H to this part is not required, creditors using it properly will be deemed to be in compliance with § 1026.19(e)(1)(vi)(C).

19(e)(3) Good Faith Determination for Estimates of Closing Costs

The Bureau is proposing to amend § 1026.19(e)(3) and its commentary regarding the good faith determination for closing cost estimates. Section 1026.19(e)(3)(i) states the general rule that an estimated closing cost is in good faith if the charge paid by or imposed on the consumer does not exceed the estimate for the cost as disclosed on the Loan Estimate. However, § 1026.19(e)(3)(ii) provides that estimates for certain third-party services and recording fees are in good faith if the sum of all such charges paid by or imposed on the consumer does not exceed the sum of all such charges disclosed on the Loan Estimate by more than 10 percent (the "10-percent tolerance" category). Moreover, § 1026.19(e)(3)(iii) provides that certain other estimates are in good faith so long as they are consistent with the best information reasonably available to the creditor at the time they are disclosed, regardless of whether the amount paid by the consumer exceeds the estimate disclosed on the Loan Estimate.

As detailed below, the Bureau is proposing minor changes and technical corrections for clarification purposes to § 1026.19(e)(3). The proposed amendment to comment 19(e)(3)(i)–1 is a technical, non-substantive change to conform it with the regulation text of § 1026.19(e)(3)(iii). New proposed comment 19(e)(3)(i)–8 clarifies charges paid by or imposed on the consumer. Proposed amendments to comments 19(e)(3)(ii)–2 and 19(e)(3)(iii)–2 would clarify that, if the creditor permits the consumer to shop but fails to provide the list required by § 1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C), good faith is determined under § 1026.19(e)(3)(i) and therefore subject to zero tolerance. Proposed amendments to § 1026.19(e)(3)(iii) and comment 19(e)(3)(iii)–4 would clarify that good-faith for non-bona fide charges is determined under § 1026.19(e)(3)(i) and therefore such charges are subject to zero tolerance, even if they would otherwise satisfy the conditions of § 1026.19(e)(3)(iii). Proposed amendments to § 1026.19(e)(3)(iii)(E) and comment 19(e)(3)(iii)–3 clarify, for purposes of § 1026.19(e)(1)(i), how good faith is determined for estimates of property taxes. Proposed amendments to § 1026.19(e)(3)(iv) and its commentary address certain details regarding the circumstances under which revised Loan Estimates may be provided to reset tolerances or for other informational purposes.

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[58] Forms H–24(A) and (G), H–25(A) and (H) through (J), and H–28(A), (F), (I), and (J) are the model forms for the Loan Estimate and Closing Disclosure.

The Bureau is proposing these clarifications to § 1026.19(e)(3) and its commentary pursuant to its authority to prescribe standards for good faith estimates under TILA section 128 and RESPA section 5, as well as its authority under TILA sections 105(a), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act. Section 128(b)(2)(A) of TILA provides that, for an extension of credit secured by a consumer's dwelling that also is subject to RESPA, good faith estimates of the disclosures in TILA section 128(a) shall be made in accordance with regulations of the Bureau.[59] Section 5(c) of RESPA states that lenders shall provide, within three days of receiving the consumer's application, a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement, as prescribed by the Bureau.[60]

The Bureau believes these proposed clarifications are authorized under TILA section 105(a). They would effectuate TILA's purposes by ensuring that the cost estimates are more meaningful and better inform consumers of the actual costs associated with obtaining credit. The proposal would further TILA's goals by ensuring more reliable estimates, which could foster competition among financial institutions. The proposal could also prevent potential circumvention or evasion of TILA.

In addition, the Bureau believes that these proposed clarifications are consistent with Dodd-Frank Act section 1032(a) because requiring more accurate initial estimates of the costs of the transaction could ensure that the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan. The Bureau believes these proposed clarifications are also in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b), because providing consumers with more accurate estimates of the cost of the mortgage loan transaction could improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure.

Section 19(a) of RESPA authorizes the Bureau to prescribe regulations and make interpretations to carry out the purposes of RESPA,[61] which include the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services.[62] The Bureau believes that these proposed clarifications are appropriate under RESPA section 19(a) because they effectively require charges to be bona fide and would thus encourage settlement service provider competition.

19(e)(3)(i) General Rule

Section 1026.19(e)(3)(i) provides that an estimated closing cost disclosed on the Loan Estimate is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed on the Loan Estimate. The Bureau is proposing to modify comment 19(e)(3)(i)–1 to conform with the regulation text of § 1026.19(e)(3)(iii). The Bureau is also proposing to add new comment 19(e)(3)(i)–8 to clarify that the phrases "paid by or imposed on the consumer" and "payable by the consumer" both reflect the same standard in Regulation Z.

Comment 19(e)(3)(i)–1 states that fees paid to, among others, the creditor, an affiliate of the creditor, or a mortgage broker are subject to the general rule and thus are subject to zero tolerance under § 1026.19(e)(3)(i). However, § 1026.19(e)(3)(iii) states that certain such charges, *e.g.,* prepaid interest, are in good faith if they are consistent with the best information reasonably available to the creditor at the time they are disclosed, regardless of whether the amounts paid by the consumer exceed the amounts disclosed under § 1026.19(e)(1)(i). The Bureau is proposing to make a technical, non-substantive change to comment 19(e)(3)(i)–1 to conform it with the regulation text of § 1026.19(e)(3)(iii). Consistent with § 1026.19(e)(3)(iii), the proposed amendment to comment 19(e)(3)(i)–1 would clarify that fees paid to, among others, the creditor, an affiliate of the creditor, or a mortgage broker are generally subject to § 1026.19(e)(3)(i), except as provided in § 1026.19(e)(3)(ii) or (iii).

While § 1026.19(e)(3)(i) provides that good faith is determined by whether a closing cost paid by or imposed on the consumer does not exceed the amount originally disclosed on the Loan Estimate, other sections of Regulation Z, including the finance charge definition in § 1026.4(a), are framed in terms of whether the charge is payable by the consumer rather than whether it is paid by or imposed on the consumer. The Bureau regards these standards, "paid by or imposed on the consumer" and "payable by the consumer," as interchangeable. For example, existing commentary emphasizes that the term "payable" includes charges imposed on the consumer, even if the consumer does not pay for such charges at consummation.[63] Under § 1026.19(e)(3)(i), when a closing cost paid by or imposed on the consumer exceeds the amount disclosed on the Loan Estimate, the amount disclosed on the Loan Estimate was not made in good faith by the creditor. The use of the phrases "paid by or imposed on the consumer" and "payable by the consumer" both reflect the same standard. Accordingly, the Bureau also proposes to add comment 19(e)(3)(i)–8 to clarify that the terms "paid by or imposed on," as used in § 1026.19(e)(3)(i), has the same meaning as the term "payable," as used elsewhere in Regulation Z.

19(e)(3)(ii) Limited Increases Permitted for Certain Charges

Comment 19(e)(3)(ii)–2, among other things, explains that § 1026.19(e)(3)(ii) provides flexibility in disclosing the individual amount of a fee by focusing on aggregate amounts and illustrates the concept with an example. The Bureau has learned that there is some uncertainty regarding the interplay of the requirements for shopping in § 1026.19(e)(1)(vi) and the tolerance category requirements in § 1026.19(e)(3)(ii) and (iii).

The Bureau is proposing to revise comment 19(e)(3)(ii)–2 to clarify that creditors are in compliance with § 1026.19(e)(3)(ii) so long as the creditor permits the consumer to shop for the services listed consistent with § 1026.19(e)(1)(vi) and the aggregate increase in charges does not exceed 10 percent, even if the amount of an individual fee was omitted from the

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[59] 15 U.S.C. 1638(b)(2)(A).

[60] 12 U.S.C. 2604(c).

[61] 12 U.S.C. 2617(a).

[62] 12 U.S.C. 2601(a).

[63] *See, e.g.,* comments 4(a)–2, 4(a)–4.ii.C, 4(a)–5, 4(a)(2)–2, 4(c)(2)–1.i, 4(c)(7)–1 and –2, and 32(b)1–1.i and –2.i.

Loan Estimate. The Bureau is proposing to revise comment 19(e)(3)(ii)–2 to clarify further that, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C), good faith is determined under § 1026.19(e)(3)(i) instead of § 1026.19(e)(3)(ii) or (iii) regardless of the provider selected by the consumer.

19(e)(3)(iii) Variations Permitted for Certain Charges

Charges Paid to Affiliates of the Creditor

Section 1026.19(e)(3)(iii) states that certain charges, including certain charges paid to affiliates of the creditor, are in good faith for purposes of § 1026.19(e)(1)(i) if they are consistent with the best information reasonably available, regardless of whether the amounts paid by the consumer exceed the amounts disclosed under § 1026.19(e)(1)(i). The exception in § 1026.19(e)(3)(iii) applies to the following five categories of charges: (A) Prepaid interest; (B) property insurance premiums; (C) amounts placed into an escrow, impound, reserve, or similar account; (D) charges paid to third-party service providers selected by the consumer consistent with § 1026.19(e)(1)(vi)(A) that are not on the list provided under § 1026.19(e)(1)(vi)(C); and (E) charges paid for third-party services not required by the creditor.

The Bureau understands that there is uncertainty whether all five of the § 1026.19(e)(3)(iii) categories include charges paid to affiliates of the creditor or if only the § 1026.19(e)(3)(iii)(E) category (*i.e.,* charges paid for third-party services not required by the creditor) includes charges paid to affiliates of the creditor. The Bureau believes there are reasonable arguments to support either of those interpretations under the current rule but is proposing to change the rule prospectively so that all five categories expressly include charges paid to affiliates.

The Bureau proposes to amend § 1026.19(e)(3)(iii) to clarify that, for purposes of § 1026.19(e)(1)(i), good faith is determined under § 1026.19(e)(3)(iii) for all five of the categories of charges listed therein, regardless of whether such charges are paid to affiliates of the creditor, so long as the charges are bona fide. This proposed amendment is consistent with the preamble to the TILA–RESPA Final Rule, which stated that property insurance premiums are included in the category of settlement charges not subject to a tolerance, whether or not the insurance provider is a lender affiliate.[64]

The Bureau also proposes to add new comment 19(e)(3)(iii)–4 to clarify that, to be bona fide for purposes of § 1026.19(e)(3)(iii), charges must be lawful and for services that are actually performed. The Bureau believes that adding this explicit limitation to the determination of good faith under § 1026.19(e)(3)(iii) would limit any potential consumer harm associated with permitting variations for charges within the five categories, even if paid to an affiliate of the creditor.

The proposed bona fide determination under § 1026.19(e)(3)(iii) would be specifically for determining good faith for purposes of § 1026.19(e)(1)(i). For example, such determination is distinct from the broader finance charge determination under § 1026.4(c)(7) (*i.e.,* whether certain fees are bona fide and reasonable in amount) and the points and fees determination under § 1026.32(b) (*e.g.,* the bona fide discount point definition requires, among other things, a calculation that is consistent with established industry practices).

The Bureau requests comment on all aspects of the proposal permitting good faith to be determined under § 1026.19(e)(3)(iii) for charges within the five categories paid to affiliates of the creditor, including whether good faith for charges within the five categories should be determined under § 1026.19(e)(3)(i) instead, and whether different, additional, or fewer conditions should be imposed upon the use of § 1026.19(e)(3)(iii) for charges within the five categories paid to affiliates of the creditor.

Good Faith Instead Determined Under § 1026.19(e)(3)(i)

Comment 19(e)(3)(iii)–2 notes that differences between the amounts of charges disclosed under § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. The comment also provides an illustrative example. The comment also states that, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), then good faith is determined under § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii), regardless of the provider selected by the consumer, unless the provider is an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i).

The Bureau is proposing to revise comment 19(e)(3)(iii)–2 to align with the requirements in §§ 1026.19(e)(1)(vi) and 1026.19(e)(3)(ii). Section 1026.19(e)(1)(vi) sets forth the requirements creditors must comply with if they permit a consumer to shop for settlement services. Among other things, the creditor must identify the settlement service for which the consumer is permitted to shop and identify an available provider of that service. Section 1026.19(e)(3)(ii) sets forth the requirements for the 10 percent tolerance category, which includes the requirement that the creditor permit the consumer to shop for the third-party service, consistent with § 1026.19(e)(1)(vi). The Bureau believes that a creditor did not permit a consumer to shop if the creditor failed to provide a written list of providers in compliance with § 1026.19(e)(1)(vi). Thus, the Bureau is proposing to revise comment 19(e)(3)(iii)–2 to state that good faith is determined under § 1026.19(e)(3)(i), regardless of the provider selected by the consumer, if a creditor fails to provide the list required by § 1026.19(e)(1)(vi)(C) or if the creditor provides a list that is not in compliance with § 1026.19(e)(1)(vi)(B) and (C).

19(e)(3)(iii)(E)

Under § 1026.19(e)(3)(iii)(E), charges paid for third-party services not required by the creditor are in good faith if they are consistent with the best information reasonably available to the creditor at the time such charges are disclosed. The Bureau understands that there may be some uncertainty whether real property taxes are included in this category.

The Supplementary Information to the TILA–RESPA Final Rule erroneously stated that property taxes and other fees were subject to tolerance under § 1026.19(e)(3)(i). In February 2016, the Bureau corrected this typographical error and clarified that property taxes (and property insurance premiums, homeowner's association dues, condominium fees, and cooperative fees) are not subject to tolerances, whether or not placed into an escrow or impound account.[65]

The Bureau believes the explicit enumeration of property taxes in § 1026.19(e)(3)(iii)(E) would facilitate compliance. Therefore, the Bureau is proposing to revise § 1026.19(e)(3)(iii)(E) and comment 19(e)(3)(iii)–3 to clarify that an estimate of property taxes is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed under § 1026.19(e)(1)(i). The proposed revisions to comment 19(e)(3)(iii)–3 also provide an illustrative example.

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[64] 78 FR 79730, 79829 (Dec. 31, 2013).

[65] 81 FR 7032 (Feb. 10, 2016).

19(e)(3)(iv) Revised Estimates

Section 1026.19(e)(3)(iv) provides that, for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed on the Loan Estimate (*i.e.*, the creditor may reset the applicable tolerance) if the revision is due to any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Comment 19(e)(3)(iv)(A)–1.ii states that § 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures for informational purposes, even in situations where the creditor is not resetting tolerances for any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Regardless of whether a creditor issues a revised disclosure to reset tolerances or simply for informational purposes, § 1026.17(c)(2)(i) requires that any disclosures provided to the consumer must be based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer.

The Bureau understands that there is some uncertainty whether a creditor is prohibited from providing the consumer with a revised Loan Estimate for informational purposes if a revision is not based on any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Although comment 19(e)(3)(iv)(A)–1.ii speaks explicitly to informational revisions of particular fees that are subject to the 10 percent tolerance under § 1026.19(e)(3)(ii), the Bureau considers the comment's principle equally applicable to all changes that may occasion an informational revision, regardless of the particular fee involved or which tolerance category applies to it. Accordingly, consistent with comment 19(e)(3)(iv)(A)–1.ii, the Bureau proposes to amend comment 19(e)(3)(iv)–2 and to add new comment 19(e)(3)(iv)–4 to clarify that § 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures for informational purposes, even in situations where the creditor is not resetting tolerances for any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Consistent with § 1026.17(c)(2)(i), the Bureau also proposes to add new comment 19(e)(3)(iv)–5 to clarify that, regardless of whether a creditor issues a revised Loan Estimate to reset tolerances or simply for informational purposes, § 1026.17(c)(2)(i) requires that any disclosures on the revised Loan Estimate must be based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. For example, if the creditor issues revised disclosures reflecting a new rate lock extension fee for purposes of determining good faith under § 1026.19(e)(3)(i), other charges unrelated to the rate lock extension should be reflected on the revised disclosures based on the best information reasonably available to the creditor at the time the disclosures are provided. Nonetheless, any increases in those other charges unrelated to the lock extension may not be used for the purposes of determining good faith under § 1026.19(e)(3).

19(e)(3)(iv)(D) Interest Rate Dependent Charges

Section 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised Loan Estimate to the consumer no later than three business days after the date the interest rate is locked. Section 1026.19(e)(4)(ii) prohibits a creditor from providing a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure. The Bureau understands that there is uncertainty as to how a creditor complies with § 1026.19(e)(3)(iv)(D) and provides a revised Loan Estimate if the interest rate is locked after the Closing Disclosure has been provided.

Consistent with § 1026.19(e)(4)(ii), the Bureau proposes to add new comment 19(e)(3)(iv)(D)–2 to clarify that the creditor may not provide a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure, even if the interest rate is locked on or after the date on which the creditor provides the Closing Disclosure. If the interest rate is locked on or after the date on which the creditor provides the Closing Disclosure and the Closing Disclosure is inaccurate as a result, then the creditor must provide to the consumer a corrected Closing Disclosure, at or before consummation, reflecting any changed terms. If the rate lock causes the Closing Disclosure to become inaccurate before consummation in a manner listed in § 1026.19(f)(2)(ii), the creditor must ensure that the consumer receives a corrected Closing Disclosure no later than three business days before consummation, as provided in that paragraph. For further discussion of corrected Closing Disclosures, see the section-by-section analysis of § 1026.19(e)(4)(ii), below.

19(e)(3)(iv)(E) Expiration

Section 1026.19(e)(3)(iv)(E) provides that, for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed on the Loan Estimate (*i.e.*, the creditor may reset the applicable tolerance) if the consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate is provided under § 1026.19(e)(1)(iii).

The Bureau understands that there is uncertainty whether a creditor, for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), may reset tolerances under § 1026.19(e)(3)(iv)(E) if the consumer indicates an intent to proceed after the 10-business-day period but within a longer period for which the creditor has stated that it will honor the estimated charges originally disclosed on the Loan Estimate . The Bureau proposes to revise § 1026.19(e)(3)(iv)(E) and to add new comment 19(e)(3)(iv)(E)–2 to clarify that, if a creditor voluntarily extends the period disclosed under § 1026.37(a)(13)(ii) to a period greater than 10 business days, that longer time period becomes the relevant time period for purposes of using revised estimates under § 1026.19(e)(3)(iv)(E).

As amended, § 1026.19(e)(3)(iv)(E) would permit a creditor to use revised estimates under § 1026.19(e)(3)(iv) when the consumer indicates an intent to proceed with the transaction more than 10 business days, or more than any additional number of days specified by the creditor before the offer expires, after the disclosures required under § 1026.19(e)(1)(i) are provided. Proposed comment 19(e)(3)(iv)(E)–2 states that, if the creditor establishes a period greater than 10 business days after the disclosures were provided (or subsequently extends it to such a longer period), the longer time period becomes the relevant time period for purposes of § 1026.19(e)(3)(iv)(E). Proposed comment 19(e)(3)(iv)(E)–2 further states that a creditor establishes such a period greater than 10 business days by communicating the greater time period to the consumer, including through oral communication.

19(e)(3)(iv)(F) Delayed Settlement Date on a Construction Loan

The proposed amendment to § 1026.19(e)(3)(iv)(F) would correct a typographical error, replacing a reference to § 1026.19(f) with a reference to § 1026.19(e)(3)(iv).

19(e)(4) Provision and Receipt of Revised Disclosures

19(e)(4)(ii) Relationship to Disclosures Required Under § 1026.19(f)

Section 1026.19(e)(4)(ii) imposes certain timing restrictions on the issuance of revised Loan Estimates relative to consummation and the issuance of a Closing Disclosure to ensure that the consumer does not receive disclosures containing estimates and disclosures containing actual costs at the same time. Existing comment 19(e)(4)(ii)–1 explains that, where the rule prohibits issuance of a revised Loan Disclosure, the creditor can instead use the Closing Disclosure to reflect changes in costs that would otherwise justify issuing a revised estimate under § 1026.19(e)(3)(iv) and that that Closing Disclosure may be used for the purpose of determining good faith under § 1026.19(e)(3). The Bureau proposes to add comment 19(e)(4)(ii)–2 to clarify that creditors may use corrected Closing Disclosures provided under § 1026.19(f)(2)(i) or (ii) to reflect further changes in costs that will be used for purposes of determining good faith under § 1026.19(e)(3).

Section 1026.19(e)(4)(ii) requires that a creditor ensures receipt of any revised Loan Estimate no later than four business days before consummation and further prohibits the issuance of a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure. Even when the creditor may not provide a revised Loan Estimate under § 1026.19(e)(4)(ii), however, it can still use revised amounts for the purpose of determining good faith if the revised amounts are reflected in the Closing Disclosure, subject to the other requirements of § 1026.19(e)(4).

Although existing comment 19(e)(4)(ii)–1 expressly references only the initial Closing Disclosure issued pursuant to § 1026.19(f)(1) in explaining this fact, the same logic applies to corrected Closing Disclosures issued pursuant to § 1026.19(f)(2). As explained in comment 19(f)(1)(i)–1, if a Closing Disclosure provided to comply with § 1026.19(f)(1)(i) later becomes inaccurate, a creditor can satisfy the requirements of § 1026.19(f)(1)(i) by providing corrected disclosures that contain the actual terms of the transaction, provided that the creditor meets the timing requirements of § 1026.19(f)(2). Thus, the provision of a corrected Closing Disclosure under § 1026.19(f)(2) is properly an extension of the ongoing requirements of § 1026.19(f)(1)(i). As a result, the creditor's issuance of a corrected Closing Disclosure, as with the issuance of an original Closing Disclosure, falls within comment 19(e)(4)(ii)–1's ambit.

Accordingly, a creditor may use a corrected Closing Disclosure to reset applicable good faith tolerances when there are fewer than four business days remaining before consummation or when the Closing Disclosure has already been issued, provided that the creditor also complies with the other requirements of § 1026.19(e)(4). The Bureau is proposing comment 19(e)(4)(ii)–2 to clarify this point.

19(f) Mortgage Loans—Final Disclosures

19(f)(1) Provision of disclosures

19(f)(1)(i) Scope

As detailed in the section-by-section analysis of § 1026.19, the Bureau is proposing to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law. The Bureau is proposing conforming amendments to comment 19(f)(1)(i)–1 to reflect this proposed change to the coverage of § 1026.19(e) and (f).

19(f)(2) Subsequent Changes

19(f)(2)(iii) Changes Due to Events Occurring After Consummation

Section 1026.19(f)(1)(i) requires the creditor to provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the transaction. If, during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures required under § 1026.19(f)(1)(i) to become inaccurate and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under § 1026.19(f)(1)(i), § 1026.19(f)(2)(iii) requires the creditor to deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.[66]

Section 1026.17(c)(2)(ii), however, provides that, for a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction. Proposed comment 19(f)(2)(iii)–2 would clarify that a creditor is not required to provide to the consumer a corrected Closing Disclosure as required under § 1026.19(f)(2)(iii) for any disclosure that is accurate under § 1026.17(c)(2)(ii), even if the amount actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o).

Section 121(c) of TILA provides that any disclosure with respect to per diem interest collected upon consummation is accurate if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction. This 1995 amendment to section 121(c) of TILA is implemented in § 1026.17(c)(2)(ii). Additionally, a changed per diem interest amount does not result in a tolerance violation under § 1026.19(e)(3). Good faith is determined for per diem interest under § 1026.19(e)(3)(iii). Consequently, so long as the creditor makes the disclosure on the basis of the best information reasonably available, the creditor is not required to provide a refund for changed per diem interest under § 1026.19(f)(2)(v). Therefore, disclosures affected by the per diem interest amount are considered accurate under TILA if based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction and changes to per diem interest do not result in tolerance violations under § 1026.19(e)(3). As a result, the Bureau does not expect consumers to be harmed by not receiving post-consummation corrected disclosures reflecting the changed per diem interest amounts without a refund of any additional per diem charge to the consumer.

The Bureau is proposing to add comment 19(f)(2)(iii)–2 to clarify the interaction of §§ 1026.19(f)(2)(iii) and 1026.17(c)(2)(ii), such that a creditor is not required to provide to the consumer a corrected Closing Disclosure for any disclosure that is accurate under § 1026.17(c)(2)(ii), even if the amount actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o). The Bureau seeks comment generally on the requirement in § 1026.19(f)(2)(iii) for creditors to provide corrected disclosures in certain circumstances as a result of post-consummation events. Specifically, the Bureau seeks comment on its proposed approach to the interaction between §§ 1026.17(c)(2)(ii) and 1026.19(f)(1)(i), including whether the Bureau should require disclosure of post-consummation changed per diem interest amounts despite the disclosure's accuracy under § 1026.17(c)(2)(ii) and the lack of any requirement on the part of the creditor to provide a refund for any change in the amount of per diem interest charged. The Bureau seeks comment on the benefits to consumers of receiving a post-consummation disclosure of the changed per diem interest amounts reflecting the actual amounts paid by the consumer. The Bureau also seeks comment on whether additional clarity is needed in § 1026.17(e) or § 1026.19(e) regarding the effect of post-consummation events on the accuracy of disclosures or if additional clarity is needed on the interaction between §§ 1026.17(e) and 1026.19(e).

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[66] Section 1026.17(e) provides that if a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of part 1026, although such inaccuracies may require new disclosures or a cure under § 1026.19(f).

19(f)(2)(v) Refunds Related to the Good Faith Analysis

Comment 19(f)(2)(v)–1 explains that under § 1026.19(f)(2)(v), if amounts paid at consummation exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. Comment 19(f)(2)(v)–1 refers to comment 38(h)(3)–2 for additional guidance on disclosing refunds. The Bureau is proposing to revise comment 19(f)(2)(v)–1 to add a cross-reference to comment 38–4. As discussed in the section-by-section analysis of proposed comment 38–4, the Bureau is proposing to clarify that there are other options for disclosing refunds where a contractual or other legal obligation of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the borrower. The Bureau is also proposing to revise the example in comment 19(f)(2)(v)–1 for greater clarity.

19(f)(3) Charges disclosed

19(f)(3)(ii) Average charge

As detailed in the section-by-section analysis of § 1026.19, the Bureau is proposing to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law. The Bureau is proposing conforming amendments to comment 19(f)(3)(ii)–3 to reflect this proposed change to the coverage of § 1026.19(e) and (f).

19(f)(4) Transactions Involving a Seller

19(f)(4)(i) Provision to Seller

Comment 19(f)(4)(i)–1 explains that the settlement agent complies with § 1026.19(f)(4)(i) either by providing to the seller a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable. Section 1026.38(t)(5)(v) permits the creditor or settlement agent preparing the form to use form H–25 of appendix H for the disclosure provided to both the consumer and the seller, with certain modifications to separate the information of the consumer and seller, as necessary. Section 1026.38(t)(5)(vi) permits certain information to be deleted from the form provided to the seller or a third-party, as illustrated by form H–25(I) of appendix H. As discussed in more detail below, the Bureau is proposing to streamline § 1026.19(f)(4)(i) and comment 19(f)(4)(i)–1 by eliminating unnecessary text and to add comment 19(f)(4)(i)–2 to clarify that, in purchase transactions with a simultaneous loan for subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the Closing Disclosure for the first-lien transaction if that Closing Disclosure records the entirety of the seller's transaction.

In purchase transactions with a simultaneous loan for subordinate financing, if the Closing Disclosure for the first-lien transaction records the entirety of the seller's transaction, the seller receives no additional benefit from receiving a copy of the Closing Disclosure for the simultaneous loan for subordinate financing that is provided to the consumer. Accordingly, the Bureau is proposing to add comment 19(f)(4)(i)–2 to clarify that, in purchase transactions with a simultaneous loan for subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the Closing Disclosure for the first-lien transaction if that Closing Disclosure records the entirety of the seller's transaction. If the first-lien Closing Disclosure does not record the entirety of the seller's transaction, which may occur when, for example, the seller contributes to the costs of the simultaneous loan for subordinate financing, the Closing Disclosure for the simultaneous loan for subordinate financing must reflect the seller's transaction as applicable to the subordinate financing. The settlement agent in that case complies with § 1026.19(f)(4)(i) by providing the seller with a copy of the Closing Disclosure for both the first lien and the simultaneous loan for subordinate financing, if they also contain the information under § 1026.38 relating to the seller's transaction, or by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.

The Bureau seeks comment on whether the appropriate determinate of whether a seller is provided a copy of the Closing Disclosure for the simultaneous loan for subordinate financing is if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau also seeks comment on whether there are other circumstances where the seller would benefit from receiving a copy of the Closing Disclosure for the simultaneous loan for subordinate financing.

19(g) Special Information Booklet at Time of Application

As detailed in the section-by-section analysis of § 1026.19, the Bureau is proposing to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law. The Bureau is proposing conforming amendments to § 1026.19(g) to reflect this proposed change to the coverage of § 1026.19(e) and (f).

Section 1026.23 Right of Rescission

23(g) Tolerances for Accuracy

TILA section 125 sets forth a consumer's right to rescind certain transactions.[67] For purposes of a consumer's right of rescission, TILA section 106(f)(2)[68] sets forth the applicable tolerances for accuracy of the finance charge[69] and other disclosures affected by any finance charge, which has been understood to include the total of payments.[70] Section 1026.23(g) implements this statutory provision.

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[67] 15 U.S.C. 1635.

As explained more fully in the section-by-section analysis of § 1026.38(o)(1), the finance charge tolerance historically applied to the total of payments because that calculation was affected by the finance charge. However, in the TILA–RESPA Final Rule, the Bureau modified the requirement under TILA section 128(a)(5) to disclose the total of payments as the sum of the amount financed and the finance charge by requiring instead that a creditor disclose the total of payments on the Closing Disclosure as the sum of principal, interest, mortgage insurance, and loan costs. The Bureau believed that modifying the calculation of the disclosure would improve consumer understanding.[71] For the reasons discussed in the section-by-section analysis of § 1026.38(o)(1), the Bureau believes it is appropriate to continue to apply the tolerances for the finance charge and disclosures affected by the finance charge to the modified total of payments calculation. Accordingly, the Bureau proposes to revise § 1026.23(g) to apply the same tolerances for accuracy to the total of payments for purposes of the Closing Disclosure that already apply to the finance charge and other disclosures affected by the finance charge.

Specifically, the Bureau proposes to redesignate existing § 1026.23(g)(1) and (2) as § 1026.23(g)(1)(i) and (2)(i) and to amend § 1026.23(g)(1)(ii) to provide that, in general, the total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of § 1026.23 if the disclosed total of payments: (A) Is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or (B) is greater than the amount required to be disclosed. The Bureau further proposes to amend § 1026.23(g)(2)(ii) to provide that, in a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 1026.32), if there is no new advance and no consolidation of existing loans, the total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of § 1026.23 if the disclosed total of payments: (A) Is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or (B) is greater than the amount required to be disclosed. The Bureau seeks comment on these proposed revisions to § 1026.23(g). The Bureau also proposes to add new comment 23(g)–1, which would reference the examples set forth in proposed comment 38(o)–1 that illustrate the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

Legal Authority

The Bureau proposes to revise § 1026.23(g) to apply the same tolerances for accuracy of the finance charge and other disclosures affected by the finance charge to the total of payments for each transaction subject to § 1026.19(e) and (f) pursuant to its authority to set tolerances for numerical disclosures under TILA section 121(d).[72] Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute.

The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d). As noted below in the section-by-section analysis of § 1026.38(o)(1), the Bureau has concluded that the proposed tolerances for the total of payments would promote consistency with the tolerances in effect before the TILA–RESPA Final Rule. The Bureau therefore believes that the proposed tolerances facilitate compliance with the statute. Additionally, the Bureau believes that the tolerances in proposed § 1026.23(g)(1)(ii) and (2)(ii), which are identical to the finance charge tolerances provided by Congress in TILA section 106(f), are sufficiently narrow to prevent these tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of TILA.

23(h) Special Rules for Foreclosures

23(h)(2) Tolerance for Disclosures

For purposes of exercising rescission rights after the initiation of foreclosure, TILA section 125(i)(2) explains that the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $35 or is greater than the amount required to be disclosed.[73] Section 1026.23(h)(2) implements this statutory provision.

As explained more fully above in the section-by-section analysis related to § 1026.23(g) and below in the section-by-section analysis of § 1026.38(o)(1), the finance charge tolerance historically applied to the total of payments because that calculation was affected by the finance charge. Accordingly, for the reasons discussed in the section-by-section analyses of §§ 1026.23(g) and 1026.38(o)(1), the Bureau proposes to revise § 1026.23(h)(2) to apply the same tolerances for accuracy to the total of payments for purposes of the Closing Disclosure that already apply to the finance charge and other disclosures affected by the finance charge.

Specifically, the Bureau proposes to redesignate existing § 1026.23(h)(2) as § 1026.23(h)(2)(i) and to amend § 1026.23(h)(2)(ii) to provide that, after the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of § 1026.23 if the disclosed total of payments: (A) Is understated by no more than $35; or (B) is greater than the amount required to be disclosed. The Bureau seeks comment on this proposed amendment to § 1026.23(h)(2).

The Bureau proposes to revise comment 23(h)(2)–1 to explain that, for each transaction subject to § 1026.19(e) and (f), § 1026.23(h)(2) is also based on the accuracy of the total of payments, taken as a whole, rather than its components. The Bureau also proposes to add new comment 23(h)(2)–2, which would reference the examples set forth in proposed comment 38(o)–1 that illustrate the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

Legal Authority

The Bureau proposes to revise § 1026.23(h)(2) to apply the same tolerances for accuracy of the finance charge and other disclosures affected by the finance charge to the total of payments for each transaction subject to § 1026.19(e) and (f) pursuant to its authority to set tolerances for numerical disclosures under TILA section 121(d).[74] Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute. The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d). As noted below in the section-by-section analysis of § 1026.38(o)(1), the Bureau has concluded that the proposed tolerances for the total of payments would promote consistency with the tolerances in effect before the TILA–RESPA Final Rule. The Bureau therefore believes that the proposed tolerances facilitate compliance with the statute. Additionally, the Bureau believes that the tolerances in proposed § 1026.23(h)(ii), which are identical to the finance charge tolerances provided by Congress in TILA section 125(i)(2), are sufficiently narrow to prevent these tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of TILA.

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[68] 15 U.S.C. 1605(f)(2).

[69] Finance charge is defined in TILA section 106(a) (15 U.S.C. 1605(a)). Section 1026.4 implements this definition, provides examples, and excludes certain charges from the finance charge.

[70] *See Carmichael* v. *The Payment Ctr., Inc.*, 336 F.3d 636, 639 (7th Cir. 2003) (interpreting the total of payments as a disclosure affected by the finance charge and therefore subject to the finance charge tolerances as long as a misdisclosure of the total of payments resulted from a misdisclosure of the finance charge).

[71] 78 FR 79730, 80038 (Dec. 31, 2013).

[72] 15 U.S.C. 1631(d).

[73] 15 U.S.C. 1635(i)(2).

Section 1026.25 Record Retention

25(c) Records Related to Certain Requirements for Mortgage Loans

25(c)(1) Records Related to Requirements for Loans Secured by Real Property

As detailed in in the section-by-section analysis of § 1026.19 above, the Bureau is proposing amendments to conform the paragraph title for § 1026.25(c)(1), and a subheading for the commentary to § 1026.25(c)(1), with the Bureau's proposal to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law.

Section 1026.37 Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

37(a) General Information

37(a)(7) Sale Price

Comment 37(a)(7)–1 explains the requirement in § 1026.37(a)(7)(ii) to provide the estimated value of the property in transactions where there is no seller. The comment states that, where there is no seller, the creditor may use the estimate provided by the consumer at application, or if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, use that estimate. The Bureau is proposing to revise comment 37(a)(7)–1 to clarify that, if a creditor has performed its own estimate of the property value by the time the disclosure is provided to the consumer, the creditor must disclose its own estimate under § 1026.37(a)(7)(ii). In addition, as discussed in relation to § 1026.19 above, the Bureau is proposing amendments to conform comment 37(a)(7)–2 with the Bureau's proposal to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e), regardless of whether a cooperative unit is treated as real property under State or other applicable law.

37(a)(8) Loan Term

Section 1026.37(a)(8) requires disclosure of the term to maturity of the credit transaction. The Bureau is proposing to add comment 37(a)(8)–3 to provide a cross-reference to proposed new comment app. D–7.i, which explains the disclosure of the loan term for a construction-permanent loan, taking into account the unique features of such a transaction.

37(a)(9) Purpose

Section 1026.37(a)(9) requires a creditor to disclose on the Loan Estimate the consumer's intended use for the credit, labeled "Purpose." Comment 37(a)(9)–1.i explains that the creditor must disclose the loan purpose as "Purchase" when the consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit. Because the proceeds from a simultaneous loan for subordinate financing in a purchase transaction are used to purchase the property that will secure the extension of credit, the Bureau is proposing to amend comment 37(a)(9)–1.i to clarify that simultaneous subordinate financing in such cases is also disclosed with the purpose as "Purchase."

37(a)(10) Product

Section 1026.37(a)(10) requires a description of the loan product to be disclosed, including the features that may change the periodic payment. Comment 37(a)(10)–2.ii explains disclosure of the interest only feature. The Bureau is proposing to add a cross-reference in comment 37(a)(10)–2.ii to proposed comment app. D–7.ii, which would explain the disclosure of the time period of the interest only feature for a construction loan or a construction-permanent loan.

37(a)(13) Rate Lock

Section 1026.37(a)(13) requires creditors to disclose the date and time at which estimated closing costs expire. Section 1026.19(e)(3)(iv)(E) provides that, for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed on the Loan Estimate (*i.e.,* the creditor may reset the applicable tolerance) if the consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate is provided under § 1026.19(e)(1)(iii). The Bureau proposes to amend comment 37(a)(13)–2 to clarify the relationship between the expiration date disclosure under § 1026.37(a)(13)(ii) and the ability to reset tolerances under § 1026.19(e)(3)(iv)(E). The Bureau also proposes to amend comment 37(a)(13)–2 by adding a cross-reference to new proposed comment 19(e)(3)(iv)(E)–2, which would clarify when the creditor may use a revised estimate of a charge for the purposes of determining good faith under § 1026.19(e)(3)(i) and (ii) when the creditor voluntarily extends the period for which it will honor the estimated charges disclosed on the Loan Estimate for a period beyond 10 business days. The Bureau further proposes to add new comment 37(a)(13)–3 to clarify that, once the consumer has indicated an intent to proceed with the transaction, the date and time at which estimated closing costs expire would be left blank on revised Loan Estimates, if any.

37(b) Loan Terms

37(b)(1) Loan Amount

Section 1026.37(b)(1) currently requires the disclosure on the Loan Estimate of the amount of credit to be extended under the terms of the legal obligation, labeled "Loan Amount." For federally related mortgage loans under RESPA, § 1024.7(d) of Regulation X required the disclosure of the loan amount in the summary table on page 1 of the RESPA GFE. Other provisions in §§ 1026.37 and 1036.38 use this amount in the calculation of various disclosures throughout the Loan Estimate and Closing Disclosure, for instance, in the calculating cash to close tables under §§ 1026.37(h) and 1026.38(e) and (i). Section 1026.18(b) requires the disclosure of the amount financed for transactions not subject to the disclosure requirements of § 1026.19(e) and (f), along with a description of the amount financed such as ''the amount of credit provided to you or on your behalf.'' [75] The calculation of the amount financed under § 1026.18(b) is not the same as the dollar amount lent to the consumer by the creditor, despite the similar language used to define the two terms in § 1026.18(b) and § 1026.37(b)(1), respectively.

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[74] 15 U.S.C. 1631(d).

To reduce inconsistent language in Regulation Z and facilitate compliance, the Bureau proposes to revise § 1026.37(b)(1) to provide that the loan amount disclosed on the Loan Estimate (and, accordingly, on the Closing Disclosure) is the total amount the consumer will borrow, as reflected by the face amount of the note. This language would parallel that of § 1026.32(c)(5), which, as the Bureau noted in section-by-section analysis of § 1026.37(b)(1) in the TILA–RESPA Final Rule,[76] requires the disclosure of the total amount the consumer will borrow, as reflected by the face amount of the note, for loans subject to HOEPA. The Bureau believes that revising the definition of loan amount in § 1026.37(b)(1) to parallel the language in § 1026.32(c)(5) would make clearer that the same amount should be disclosed under both sections, as indicated in the 2012 TILA–RESPA Proposal. The Bureau also believes that most, if not all, creditors currently understand this intent and follow it in disclosing the loan amount. Accordingly, the Bureau believes creditors would not have to change current processes or systems under the proposal. The Bureau requests comment, however, on whether changing the language defining the loan amount under 1026.37(b)(1) would require any changes to creditors' processes or systems or would change the loan amount that creditors currently disclose to the consumer.

37(b)(2) Interest Rate

Section 1026.37(b)(2) requires disclosure of the interest rate that will be applicable to the transaction at consummation. The Bureau is proposing to add a cross-reference in comment 37(b)(2)–1 to proposed comment app. D–7.iii, which, as discussed further below, would explain the disclosure of the permanent financing interest rate for a construction-permanent loan.

37(b)(3) Principal and Interest Payment

Section 1026.37(b)(3) requires disclosure of the initial periodic payment amount. The Bureau is proposing to add a cross-reference in comment 37(b)(3)–2 to proposed comment app. D–7.iv, which would explain the disclosure of an initial periodic payment for a construction or construction-permanent loan.

37(b)(6) Adjustments After Consummation

37(b)(6)(iii) Increase in Periodic Payment

Section 1026.37(b)(6)(iii) requires disclosures of increases in the periodic payment. The Bureau is proposing to add a cross-reference in comment 37(b)(6)(iii)–1 to proposed comment app. D–7.v, which, as discussed further below, would explain the disclosure of an increase in the periodic payment for a construction or construction-permanent loan.

37(c) Projected Payments

Section 1026.37(c) requires itemization of each separate periodic payment or range of payments. As described below, the Bureau is proposing to amend the commentary accompanying § 1026.37(c), (c)(1)(iii)(B), and (c)(4)(iv). Proposed comment 37(c)–2 would provide a cross-reference to comment app. D–7.vi, which explains the projected payments disclosure for a construction or construction-permanent loan.

37(c)(1) Periodic Payment or Range of Payments

37(c)(1)(iii)

37(c)(1)(iii)(B)

Section 1026.37(c) requires creditors to disclose an itemization of the periodic payments. Section 1026.37(c)(1)(iii)(B) requires disclosing the minimum and maximum payment amount (the range) when the periodic principal and interest payment may change more than once during a single year. Section 1026.37(c)(1)(iii)(B) also requires disclosing the range when the periodic principal and interest payment may change during the same year as the initial periodic payment. Comment 37(c)(1)(iii)(B)–1 illustrates the disclosure of separate periodic payments or ranges when multiple events occur during a single year. The Bureau is proposing clarifying amendments to comment 37(c)(1)(iii)(B)–1.

The Bureau has identified inconsistencies in one of the examples in comment 37(c)(1)(iii)(B)–1 that should be harmonized to match the requirements of § 1026.37(c)(1). Specifically, one example in comment 37(c)(1)(iii)(B)–1 calls for disclosing as a single range in year two the payment that would apply on the first anniversary of the due date of the initial periodic payment as well as the periodic payment that would apply after the payment adjustment that occurs at 18 months. Section 1026.37(c)(1) does not require disclosing a range merely because the periodic principal and interest payment may change once during a single year (unless such change may occur during the same year as the initial periodic payment). Moreover, the same example in comment 37(c)(1)(iii)(B)–1 also calls for an additional separate payment disclosure specifically for ''the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the second year of the loan.'' However, § 1026.37(c)(1) does not require an additional separate payment disclosure for an anniversary unless the anniversary ''immediately follows'' the occurrence of multiple events whereby the periodic principal and interest payment may change during a single year. To correct these inconsistencies, the Bureau is proposing amendments to conform comment 37(c)(1)(iii)(B)–1 to the requirements of § 1026.37(c)(1). The Bureua is also designating subparagraphs in comment 37(c)(1)(iii)(B)–1 for clarity, without substantive changes.

The Bureau requests comment on the proposed amendments to comment 37(c)(1)(iii)(B)–1 and also solicits comment on whether additional or alternative approaches to correct the inconsistency should be adopted instead. Specifically, the Bureau requests comment on whether the text of § 1026.37(c)(1) should be amended to conform to the example in comment 37(c)(1)(iii)(B)–1 (instead of amending comment 37(c)(1)(iii)(B)–1 to conform to the text of § 1026.37(c)(1)). The Bureau also specifically requests comment on whether, rather than complying with a single, mandatory approach, creditors should have the discretion to disclose payments or ranges of payments in conformity with either the text of § 1026.37(c)(1) or the existing examples in comment 37(c)(1)(iii)(B)–1.

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[75] The amount financed is also disclosed on the Closing Disclosure pursuant to § 1026.38(o)(3).

[76] 78 FR 79730, 79921 (Dec. 31, 2013).

37(c)(4) Taxes, Insurance, and Assessments

37(c)(4)(iv)

Section 1026.37(c)(4) requires the disclosures of taxes, insurance, and assessments on the Loan Estimate. Section 1026.37(c)(4)(iv) requires a statement that the amounts disclosed under § 1026.37(c)(4)(ii) include payments for property taxes and other amounts it requires to be disclosed and whether the amounts disclosed will be paid using escrow account funds. Comment 37(c)(4)(iv)–2 explains that creditors may indicate that only some of the amounts disclosed under § 1026.37(c)(4)(ii) will be paid using escrow account funds when that is the case. In February 2015, the Bureau removed "other than amounts for payments of property taxes or homeowner's insurance" from comment 37(c)(4)(iv)–2.[77] The Bureau did so to permit creditors to disclose that a portion of the property taxes or homeowner's insurance payments were being paid from escrow, consistent with other situations where the creditor pays only a portion of the disclosed amounts from escrow. The Bureau understands that uncertainty remains over the disclosure that only a portion of the property taxes and homeowner's insurance payments will be paid from escrow. The Bureau is proposing to revise comment 37(c)(4)(iv)–2 to clarify that creditors may indicate that a portion of the property taxes and homeowner's insurance will be paid by the creditor using funds from the escrow account when that is the case.

37(c)(5) Calculation of Taxes and Insurance

37(c)(5)(i)

As detailed in in the section-by-section analysis of § 1026.19, the Bureau is proposing amendments to conform § 1026.37(c)(5)(i) with the Bureau's proposal to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e), regardless of whether a cooperative unit is treated as real property under State or other applicable law.

37(d) Costs at Closing

37(d)(2) Optional Alternative Table for Transactions Without a Seller and Simultaneous Loans for Subordinate Financing

Section 1026.37(d)(2) only permits creditors to use the optional alternative cash to close disclosure in transactions without a seller. The Bureau has provided informal guidance that, in purchase transactions with a simultaneous loan for subordinate financing, the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate if the first-lien Closing Disclosure will record the entirety of the seller's transaction and the seller did not contribute to the cost of the subordinate financing. The Bureau is proposing to amend § 1026.37(d)(2) and comment 37(d)(2)–1 to clarify that creditors may use the optional alternative cash to close disclosure for simultaneous loans for subordinate financing in purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau specifically seeks comment on whether allowing a creditor to use the optional alternative cash to close table for disclosure of simultaneous loans for subordinate financing in purchase transactions only if the first-lien Closing Disclosure will record the entirety of the seller's transaction is an appropriate limitation.

37(f) Closing Cost Details; Loan Costs

Construction Loan Inspection and Handling Fees

Section 1026.37(f) requires the disclosure of all loan costs associated with the transaction. Construction loan inspection and handling fees are loan costs associated with the construction transaction for purposes of § 1026.37(f).

If such inspection and handling fees are collected at or before consummation, they are disclosed in the loan costs table in the same manner as any other loan cost. For example, if the creditor collects a handling fee at or before consummation to process the advances of a multiple-advance construction loan, the handling fee would be disclosed as an origination charge under § 1026.37(f)(1) as an amount the consumer will pay to the creditor for originating and extending the credit. If the creditor collects an inspection fee that will be used to pay a third-party inspector that is selected by the creditor, the fee would be disclosed as an amount the consumer will pay for settlement services for which the consumer cannot shop under § 1026.37(f)(2).

Under proposed comment 37(f)–3, a creditor would disclose construction loan inspection and handling fees that are collected after consummation in a separate addendum to the Loan Estimate rather than in the loan costs table, as proposed comment 37(f)(6)–3, discussed below, would provide. The creditor would not count such fees for purposes of the calculating cash to close table. The Bureau believes that disclosing the construction loan inspection and handling fees that are collected after consummation in an addendum would promote the informed use of credit by giving consumers loan cost information necessary to exercise such informed use, while preserving the accuracy of the total amount determined in the closing costs details table that must be provided by the consumer at consummation.

Proposed comment 37(f)–3 would include a cross-reference to proposed comment 37(f)(6)–3 for an explanation of the addendum that would be used to disclose post-consummation inspection and handling fees, as discussed below. Proposed comment 37(f)–3 also would include cross-references to comments 38(f)–2 and app. D–7.viii, for additional explanations of the disclosure of such fees. Because the number of post-consummation construction loan inspections and disbursements may not be known at the time the disclosures are required to be provided, comment 37(f)–3 would include a cross-reference to comment 19(e)(1)(i)–1, which includes instruction on providing disclosures based on the best information reasonably available. Finally, comment 37(f)–3 would provide a cross-reference to § 1026.17(e) and its commentary for an explanation of the effect of subsequent events that cause inaccuracies in disclosures. The Bureau requests comment in particular on whether additional guidance on the effect of subsequent events in construction financing would provide additional clarity and what issues such additional guidance might address.

37(f)(6) Use of Addenda

The Bureau is proposing to add comment 37(f)(6)–3 to provide instruction for the addendum that would be used to disclose post-consummation construction loan inspection and handling fees. If, pursuant to proposed comment 37(f)–3, a creditor is required to disclose construction loan inspection and handling fees that will be collected after consummation, proposed comment 37(f)(6)–3 would explain that the creditor discloses the total of such fees under the heading "Inspection and Handling Fees Collected After Closing" in an addendum. Proposed comment 37(f)(6)–3 would also cross-reference comment 19(e)(1)(i)–1and explain that, if the amount of post-consummation inspection and handling fees is not known at the time the disclosures are provided, the disclosures in the addendum would be based upon the best information reasonably available. To provide additional clarity, proposed comment 37(f)(6)–3 also includes an example of the best information reasonably available standard for purposes of disclosing post-consummation inspection and handling fees by providing such information could include amounts the creditor has previously charged in similar transactions.

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[77] 80 FR 8767, 8777 (Feb. 19, 2015).

37(g) Closing Cost Details; Other Costs

37(g)(4) Other

Section 1026.37(g)(4) requires the disclosure of any other amounts in connection with the transaction that the consumer is likely to pay or has contracted, with a person other than the creditor or loan originator, to pay at consummation and of which the creditor is aware at the time of issuing the Loan Estimate. Comment 37(g)(4)–4 provides examples of items that are disclosed under § 1026.37(g)(4), including but not limited to commissions of real estate brokers or agents, additional payments to the seller to purchase personal property pursuant to the property contract, homeowner's association and condominium charges associated with the transfer of ownership, and fees for inspections not required by the creditor but paid by the consumer pursuant to the property contract. Currently, amounts for construction costs, payoff of existing liens, or payoff of unsecured debt may be, but are not required to be, disclosed under § 1026.37(g)(4). If such amounts are not disclosed under § 1026.37(g)(4), they are factored into the cash to close calculations but are not otherwise disclosed on the Loan Estimate. The Bureau is proposing to revise comment 37(g)(4)–4 to require the disclosure of construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.37(a)(6), or payoff of unsecured debt under § 1026.37(g)(4), unless those items are disclosed under § 1026.37(h)(2)(iii) on the optional alternative calculating cash to close table.

The Bureau expects consumer understanding will be enhanced by the clear and conspicuous disclosure of these amounts on the Loan Estimate, if known to the creditor at the time the Loan Estimate is provided to the consumer. The proposed revisions to comment 37(g)(4)–4, together with the proposed revisions to comment 38(g)(4)–1 discussed in the section-by-section analysis of § 1026.38(g)(4), will also create greater consistency between disclosures on the Loan Estimate and Closing Disclosure, thus facilitating consumer understanding. The Bureau believes this is an appropriate place to list the three items because they are all other closing costs that must be paid when completing a mortgage transaction.

The Bureau does not intend, by requiring disclosure under § 1026.37(g)(4) of amounts for construction costs, payoff of existing liens, and payoff of unsecured debt, to subject them to a different determination of good faith than currently provided for in § 1026.19(e)(3). Section 1026.19(e)(3)(iii)(E) provides that the amounts disclosed for third-party services not required by the creditor are disclosed in good faith regardless of whether the amounts actually paid by the consumer exceed the estimated amounts disclosed, provided such estimates are consistent with the best information reasonably available to the creditor at the time the disclosures are provided. To the extent construction costs, payoff of existing liens, or payoff of unsecured debt are bona fide, they would be subject to the determination of good faith under § 1026.19(e)(3)(iii)(E), as discussed in the section-by-section analysis of § 1026.19(e)(3)(iii)(E) above.

The Bureau considered requiring the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt under the summaries of transactions table on the Closing Disclosure under § 1026.38(j)(1)(v), instead of as "closing costs" under §§ 1026.37(g)(4) and 1026.38(g)(4). However, the Loan Estimate does not have a comparable summaries of transactions table. Disclosing these optional third-party services on the summaries of transactions table on the Closing Disclosure would not result in these costs being enumerated consistently on both the Loan Estimate and the Closing Disclosure and would interfere with the comparability between the Loan Estimate and the Closing Disclosure.

The Bureau also considered requiring the disclosure of construction costs on an addendum, instead of as other closing costs, under § 1026.37(g)(4) on the Loan Estimate and § 1026.38(g)(4) on the Closing Disclosure. The construction costs would then be factored into the calculating cash to close table calculations with the sale price to yield an accurate cash to close amount. However, this approach could add complexity to the calculations required on the Closing Disclosure because amounts disclosed under § 1026.38(j)(1)(ii) and (k)(1)(ii) would no longer be the same.

For the foregoing reasons, the Bureau is proposing to revise comment 37(g)(4)–4 to require the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt even if payable directly or indirectly to the creditor, as provided for in § 1026.37(g)(4), unless those items are disclosed under § 1026.37(h)(2)(iii) on the optional alternative calculating cash to close table. For example, if a builder is also the creditor, the bona fide cost of construction is disclosed under § 1026.37(g)(4) and not § 1026.37(f). Finally, the Bureau is proposing to revise comment 37(g)(4)–4 to cross-reference proposed comment app. D–7.vii for an explanation of the disclosure of construction costs for a construction or construction-permanent loan and proposed comment app. D–7.viii for an explanation of the disclosure of construction loan inspection and handling fees.

37(g)(6) Total Closing Costs

37(g)(6)(ii)

Section 1026.37(g)(6)(ii) requires creditors to disclose the amount of any lender credits. Comment 37(g)(6)(ii)–1 cross references comment 19(e)(3)(i)–5 and describes lender credits as payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided under § 1026.37.[78] However, as finalized in the TILA–RESPA Final Rule, comment 19(e)(3)(i)–5 states that lender credits, as identified in § 1026.37(g)(6)(ii), represent the sum of non-specific lender credits and specific lender credits. To correct this inconsistency, the Bureau is proposing to revise comment 37(g)(6)(ii)–1 to conform with the language in comment 19(e)(3)(i)–5.

37(h) Calculating Cash To Close

Section 1026.37(h) requires the disclosure of the calculation of an estimate of cash due from or to the consumer at consummation, under the heading "Calculating Cash to Close," and permits the use of an alternative calculating cash to close table for transactions without a seller. The calculating cash to close table is designed to provide the consumer, using readily understandable language and a standardized calculation methodology, with a reasonably reliable estimate of the cash due from or to the consumer at consummation. The calculating cash to close table disclosures include the total closing costs and the amount of closing costs being financed, implementing, in part, TILA section 128(a)(17).

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[78] The language used in comment 37(g)(6)(ii)–1 was based on proposed commentary in the 2012 TILA–RESPA Proposal. 77 FR 51116, 51422 (Aug. 23, 2012).

The Bureau recognized when it adopted this requirement that the creditor may not know the amount of the deposit, payments to others, and funds that the consumer either will pay or will receive at consummation. The Bureau required that the disclosure of those elements of the calculating cash to close table be based on the best information reasonably available.[79] In doing so, the Bureau recognized that the actual amount of cash to close at consummation could differ significantly from the amount disclosed on the Loan Estimate. Notably, the amounts disclosed in the calculating cash to close table are not subject to the specific tolerances under § 1026.19(e)(3) or § 1026.22(a).

The Bureau has received many questions from industry on the proper calculation of the various amounts disclosed on the calculating cash to close table. The Bureau also understands that there is some variation among creditors in how the calculating cash to close disclosures are determined. The Bureau recognizes that a lack of consistency in how the calculating cash to close disclosures are made could undermine consumer understanding. Consequently, the Bureau is addressing many of these questions, inconsistencies, and requested clarifications below, as they relate to the various amounts disclosed in the calculating cash to close table.

The Bureau is proposing amendments to § 1026.37(h) and its commentary regarding the calculating cash to close table on the Loan Estimate pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau believes that the proposed amendments will effectuate the purposes of TILA by facilitating the informed use of credit. Providing consumers with information about the cash to close amount and its critical components helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand better the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

The Bureau recognizes that the fact that the amounts disclosed on the calculating cash to close table can change significantly between the issuance of the Loan Estimate and the issuance of the Closing Disclosure could compromise the ability of consumers to understand the costs, benefits, and risks of the transaction. In addition, the calculating cash to close table includes both amounts that are and are not subject to tolerances. As a result, some consumers may have difficulty determining the proper level of reliance to place on the calculating cash to close disclosures. Some consumers may believe that the early estimate of the cash to close on the Loan Estimate is more precise than it necessarily can be.

Accordingly, the Bureau seeks comment on the calculating cash to close table generally. This includes comments on possible alternative methods to determine the amounts disclosed on the calculating cash to close table, whether the proposed clarifications and revisions discussed below will result in more consistent calculation of the amounts on the calculating cash to close table, and other ways to simplify the calculating cash to close table while providing the consumer with a reasonably reliable estimate of the amount due from or to the consumer at consummation, consistent with the requirements of TILA section 128(a)(17) and the Bureau's goal of providing understandable and consistent information to consumers. The Bureau recognizes that any redesign of the calculating cash to close table, including its components, could require extensive changes to existing processes and software investments by industry and seeks comment on the extent of such changes that would be required by the Bureau's proposal, or by any other proposals suggested by commenters, for revisions to the calculating cash to close table.

37(h)(1) For All Transactions

Section 1026.37(h)(1) requires the disclosure of a calculation, yielding an estimate of the cash needed from the consumer at consummation of the transaction, based on seven components. Each of the seven components, disclosed under § 1026.37(h)(1)(i) through (vii), respectively, is determined by a prescribed calculation. The Bureau is proposing to add comment 37(h)(1)–2 to clarify that, on the Loan Estimate for a simultaneous loan for subordinate financing, the sale price disclosed under § 1026.37(a) is not used in any of the § 1026.37(h)(1) calculations. Omitting the sale price from the cash to close calculations required under § 1026.37(h)(1) for simultaneous loans for subordinate financing will result in a cash to close amount reflecting the proceeds of the subordinate financing, itself disclosed on the first-lien Loan Estimate under § 1026.37(h)(1)(vii).

37(h)(1)(ii) Closing Costs Financed

Comment 37(h)(1)(ii)–1 explains that the amount of closing costs financed disclosed under § 1026.37(h)(1)(ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed under § 1026.37(f) and (g) from the loan amount disclosed under § 1026.37(b)(1). If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that it does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6). If the result of the calculation is zero or negative, the amount of $0 is disclosed under § 1026.37(h)(1)(ii). The Bureau is proposing to revise comment 37(h)(1)(ii)–1 and add comment 37(h)(1)(ii)–2 to provide greater clarity regarding the sale price and loan amount.

Revised comment 37(h)(1)(ii)–1 would clarify that the sale price may be included in the closing costs financed calculation as a payment to a third party not otherwise disclosed under § 1026.37(f) and (g). However, as explained in proposed comment 37(h)(1)–2, sale price is not used in any calculating cash to close calculations on the Loan Estimate for a simultaneous loan for subordinate financing in a purchase transaction. In addition, the Bureau is proposing to remove the word "total" from the phrase "total loan amount" because "total loan amount" is a defined term under § 1026.32(b)(4), and the Bureau intends only to reference the loan amount disclosed under proposed § 1026.37(b)(1).

Proposed comment 37(h)(1)(ii)–2 would explain that the loan amount disclosed under § 1026.37(b)(1) is the total amount the consumer will borrow, as reflected by the face amount of the note, consistent with proposed revisions to § 1026.37(b)(1), discussed above. The comment would also explain that financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount. The addition of this comment will clarify that, regardless of how the term "loan amount" is used by creditors or in relation to programmatic requirements of specific loan programs, for purposes of the Loan Estimate, the amount disclosed as the loan amount, and the basis for the calculating cash to close table calculations, is the total amount the consumer will borrow as reflected by the face amount of the note. This definition does not affect how other agencies may define or use similar terms for purposes of their own programmatic requirements. For example, the "Base Loan Amount" and "Total Loan Amount" for loans made under programs of the Federal Housing Administration may not be the same as the loan amount required to be disclosed under revised § 1026.37(b)(1).

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[79] 78 FR 79730, 79966–67 (Dec. 31, 2013).

37(h)(1)(iii) Down Payment and Other Funds From Borrower

Section 1026.37(h)(1)(iii)(A) requires the down payment amount in a purchase transaction as defined in § 1026.37(a)(9)(i) to be disclosed as a positive number. In these transactions, the down payment is calculated as the difference between the purchase price of the property and the principal amount of the credit extended. Comment 37(h)(1)(iii)-1 explains that, in the case of a transaction, other than a construction loan, where the loan amount exceeds the purchase price of the property, the amount of the down payment disclosed must be $0. The calculation does not capture the amount of existing loans "assumed or taken subject to" that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv). Section 1026.37(h)(1)(iii)(B) provides that, in all transactions other than purchase transactions as defined in § 1026.37(a)(9)(i), the amount of estimated funds from the consumer is determined in accordance with § 1026.37(h)(1)(v). The Bureau is proposing to revise § 1026.37(h)(1)(iii)(A) to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction in purchase transactions, to make conforming amendments to § 1026.37(h)(1)(iii)(B), to replace comment 37(h)(1)(iii)–1 with a new comment that clarifies the down payment calculation, and to add comment 37(h)(1)(iii)–2 to explain when the "Funds for Borrower" calculation under § 1026.37(h)(1)(v) is used.

Revised § 1026.37(h)(1)(iii)(A)(*1*) would specify that, in a purchase transaction as defined in § 1026.37(a)(9)(i), the creditor subtracts the sum of the loan amount and any amount for loans assumed or taken subject to that will be disclosed on the Closing Disclosure, based on the best information reasonably available at the time the creditor provides the Loan Estimate, from the sale price of the property, except as required by § 1026.37(h)(1)(iii)(A)(*2*). Revised § 1026.37(h)(1)(iii)(A)(*2*) would provide that, in a purchase transaction as defined in § 1026.37(a)(9)(i), when the sum of the loan amount and any amount for loans assumed or taken subject to that will be disclosed on the Closing Disclosure exceeds the sale price of the property, the creditor calculates the estimated funds from the consumer in accordance with proposed § 1026.37(h)(1)(v), as revised. These provisions, as proposed, would apply to all purchase transactions as defined in § 1026.37(a)(9)(i), including purchase transactions that include a construction loan component.

Section § 1026.37(h)(1)(iii)(B), as revised, would provide that, for all other transactions, the estimated funds from the consumer would also be calculated in accordance with the "Funds for Borrower" calculation in proposed § 1026.37(h)(1)(v). Comment 37(h)(1)(iii)–2 would explain the amount to be disclosed under § 1026.37(h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) is determined in accordance with the "Funds for Borrower" calculation in proposed § 1026.37(h)(1)(v). See the section-by-section analysis of § 1026.37(h)(1)(v) for a discussion of the proposed revisions to that section and to comment 37(h)(1)(v)–1.

As a result of the proposed revisions to § 1026.37(h)(1)(iii), existing comment 37(h)(1)(iii)–1 would not be accurate or necessary. Therefore, the Bureau is proposing to replace it with a new comment. The Bureau recognizes that some loan programs require borrowers to provide minimum cash investments, which, under the regulations or requirements of those loan programs, may be referred to as "down payments." Revised comment 37(h)(1)(iii)–1 would explain the down payment calculation that must be followed for accurate disclosure of the down payment amount. The comment would also explain that the minimum cash investments required of consumers under some loan programs are not necessarily reflected in the down payment disclosure, and accurate disclosure of the down payment does not affect compliance or non-compliance with such loan programs' requirements.

37(h)(1)(v) Funds for Borrower

Section 1026.37(h)(1)(v) provides that the amount of funds from the consumer disclosed under § 1026.37(h)(1)(iii)(B) and of funds for the consumer disclosed under § 1026.37(h)(1)(v) are calculated by subtracting the principal amount of the credit extended, excluding any closing costs financed disclosed under § 1026.37(h)(1)(ii), from the total amount of all existing debt being satisfied in the transaction, except to the extent the satisfaction of such existing debt is disclosed under § 1026.37(g). "Funds for Borrower" represents generally the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction, such as in cash-out refinance transactions, and "Funds from Borrower" the amount expected to be paid by the consumer at consummation. The determination of whether the transaction will result in "Funds for Borrower" is made under § 1026.37(h)(1)(v). When the result of the calculation is positive, that amount is disclosed under § 1026.37(h)(1)(iii) as "Funds from Borrower," and $0 is disclosed under § 1026.37(h)(1)(v) as "Funds for Borrower." When the result of the calculation is negative, that amount is disclosed under § 1026.37(h)(1)(v) as "Funds for Borrower," and $0 is disclosed under § 1026.37(h)(1)(iii) as "Funds from Borrower." When the result is $0, $0 is disclosed as "Funds from Borrower" and "Funds for Borrower." As discussed in more detail below, the Bureau is proposing to revise § 1026.37(h)(1)(v) to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction in purchase transactions, to revise comment 37(h)(1)(v)–1 to explain when $0 is disclosed as "Funds for Borrower" in purchase transactions, and to add comment 37(h)(1)(v)–2 to clarify what amounts are included as existing debt being satisfied in the transaction.

Existing comment 37(h)(1)(v)–1 clarifies that the "Funds for Borrower" calculation under § 1026.37(h)(1)(v) is used in a non-purchase transaction to determine the amount disclosed under § 1026.37(h)(1)(iii) as "Funds from Borrower," and that, in a purchase transaction, other than a construction loan, the amount disclosed under § 1026.37(h)(1)(v) as "Funds for Borrower," will be $0, in accordance with § 1026.37(h)(1)(v)(A). The Bureau nonetheless recognizes that there are circumstances when a purchase transaction will result in funds disbursed to the consumer such that the disclosure of "Funds for Borrower" under § 1026.37(h)(1)(v) should not be $0.

As discussed in the section-by-section analysis of § 1026.37(h)(1)(iii) above, the Bureau proposes to amend the "Funds from Borrower" calculation under § 1026.37(h)(1)(iii) to specify that, in purchase transactions, when the sum of the loan amount and any amount for existing loans assumed or taken subject to that will later be disclosed under

§ 1026.38(j)(2)(iv) exceeds the sale price, the "Funds for Borrower" calculation in proposed § 1026.37(h)(1)(v) will be used for the transaction. The Bureau is proposing conforming revisions to § 1026.37(h)(1)(v) to reflect that, in transactions where cash is expected to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction, the "Funds for Borrower" calculation under § 1026.37(h)(1)(v) would be used.

The Bureau also is proposing to revise comment 37(h)(1)(v)–1 to conform with proposed revisions to § 1026.37(h)(1)(v). The comment would no longer provide that the "Funds for Borrower" calculation under § 1026.37(h)(1)(v) is only used in non-purchase transactions. Instead, the comment would provide that, when the down payment is determined in accordance with § 1026.37(h)(1)(iii)(A)(*1*), the amount disclosed under § 1026.37(h)(1)(v) as funds for the borrower is $0.

Proposed comment 37(h)(1)(v)–2 would provide that the amounts disclosed under § 1026.37(h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B), as applicable, and (h)(1)(v) are determined by subtracting the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans "assumed or taken subject to" that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. Proposed comment 37(h)(1)(v)–2 would further clarify that the phrase "total amount of all existing debt being satisfied by the transaction" refers to amounts that will be disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The Bureau seeks comment on whether defining the phrase "total amount of all existing debt being satisfied by the transaction" to mean specifically amounts that will be disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive and how else the Bureau might provide greater clarity around amounts that must be included in this calculation as part of the "total amount of all existing debt being satisfied by the transaction."

37(h)(1)(vi) Seller Credits

Section 1026.37(h)(1)(vi) requires creditors to disclose the amount that the seller will pay for total loan costs and total other costs, labeled "Seller Credits," under the heading "Calculating Cash to Close." Section 1026.37(f) and (g) requires creditors to disclose loan costs and other transaction costs under the headings "Loan Costs" and "Other Costs," respectively. The Bureau proposes to amend comment 37(h)(1)(vi)–2 to clarify that specific seller credits may be disclosed in the calculating cash to close table under § 1026.37(h)(1)(vi) or, at the creditor's option, may be reflected within the amounts disclosed for those specific items in the loan costs and other costs tables, under § 1026.37(f) and (g), respectively. The Bureau believes that neither approach significantly affects overall consumer comprehension or risk of other consumer harm, but the Bureau solicits comment on this view and on whether one of the two approaches should be mandatory rather than leaving the treatment of specific seller credits in the creditor's discretion and, if so, why.

37(h)(1)(vii) Adjustments and Other Credits

Section 1026.37(h)(1)(vii) requires that the amount of all loan costs determined under § 1026.37(f) and other costs determined under § 1026.37(g) that are to be paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts that are required to be paid by the consumer at consummation pursuant to a purchase and sale contract, be disclosed as a negative number. This assumes that the amount required to be paid by the consumer at consummation pursuant to a purchase and sale contract will be greater than the amount of credits, which, the Bureau understands, may not always be the case. Therefore, the Bureau is proposing to revise § 1026.37(h)(1)(vii) to eliminate the requirement that the amount disclosed be a negative number and to make corresponding revisions to comment 37(h)(1)(vii)–6. As discussed below, the Bureau is also proposing to revise comment 37(h)(1)(vii)–1 to clarify that amounts expected to be provided to consumers in advance of consummation are not required to be disclosed, comment 37(h)(1)(vii)–5 to clarify that subordinate financing must be disclosed on the first-lien transaction Loan Estimate, and comment 37(h)(1)(vii)–6 to clarify what amounts are included in the adjustments and other credits calculation under § 1026.37(h)(1)(vii).

Comment 37(h)(1)(vii)–1 clarifies that amounts expected to be paid by third parties not involved in the transaction, such as gifts from family members, and not otherwise identified under § 1026.37(h)(1) are included in the amount disclosed under § 1026.37(h)(1)(vii), but the comment does not specify whether amounts received by the consumer prior to consummation must be included in the calculation. The Bureau is proposing to revise comment 37(h)(1)(vii)–1 to distinguish between amounts paid by third parties at consummation and amounts given to consumers in advance of consummation. As proposed, the revision to comment 37(h)(1)(vii)–1 would state that amounts expected to be paid at consummation by third parties not involved in the transaction, such as gifts from family members, and not otherwise identified under § 1026.37(h)(1), are included in the amount disclosed under § 1026.37(h)(1)(vii), although amounts expected to be provided to consumers in advance of consummation by third parties not otherwise involved in the transaction, including gifts from family members, are not required to be disclosed under § 1026.37(h)(1)(vii).

Comment 37(h)(1)(vii)–5 clarifies that funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii), but the comment does not specify whether this requirement pertains to the first- or subordinate-lien transaction. The Bureau is proposing to revise comment 37(h)(1)(vii)–5 to clarify that funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii) on the first-lien Loan Estimate. The funds that are provided to the consumer from the proceeds of subordinate financing and that will be applied to the first-lien transaction are not included in the adjustments and other credits calculation on the simultaneous loan for subordinate financing Loan Estimate. The Bureau seeks comment on whether there are circumstances in which local or State housing assistance grants are applied towards subordinate financing and not to the first lien.

Comment 37(h)(1)(vii)–6 clarifies that adjustments that require additional funds from the consumer pursuant to the real estate purchase and sale contract, such as for additional personal property, that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) may be included in the amount disclosed under § 1026.37(h)(1)(vii) and would reduce the total amount disclosed. However, such amounts may have already been factored into calculations for prior components of the calculating cash to close table, thereby being counted twice. The Bureau is proposing to revise comment 37(h)(1)(vii)–6 to clarify that amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) may be included in the adjustments and other credits amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii), provided they are not also included in the calculation for proposed § 1026.37(h)(1)(iii) or (v) as debt being satisfied in the real estate transaction. Otherwise, such amounts will be factored into the cash to close calculations twice. See the section-by-section analysis of § 1026.37(h)(1)(iii) and (v) above for further details.

37(h)(2) Optional Alternative Calculating Cash To Close Table for Transactions Without a Seller and Simultaneous Loans for Subordinate Financing

Section 1026.37(h)(2) only permits the use of the optional alternative calculating cash to close table in transactions without sellers. The Bureau has provided informal guidance that, in purchase transactions with a simultaneous loan for subordinate financing, the optional alternative calculating cash to close table may be used for the simultaneous subordinate financing Loan Estimate if the first-lien Closing Disclosure will record the entirety of the seller's transaction and the seller did not contribute to the subordinate financing. The Bureau is proposing to amend § 1026.37(h)(2) and comment 37(h)(2)–1 to permit creditors to use the optional alternative calculating cash to close table for the disclosure of simultaneous loans for subordinate financing in purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau specifically seeks comment on whether allowing a creditor to use the optional alternative cash to close table for disclosure of simultaneous loans for subordinate financing in purchase transactions only if the first-lien Closing Disclosure will record the entirety of the seller's transaction is an appropriate limitation.

37(h)(2)(iii) Payoffs and Payments

Section 1026.37(h)(2)(iii) requires the disclosure of the total of all payments to third parties not otherwise disclosed under § 1026.37(f) and (g) as a negative number. The requirement to disclose a negative number, however, does not account for limited circumstances in which funds provided by third parties and the proceeds of subordinate financing exceed the total amount of payoffs and payments to third parties. Comment 37(h)(2)(iii)–1 provides examples of payoffs and payments, including payoff of existing liens secured by the property identified under § 1026.37(a)(6). As discussed in the section-by-section analysis of § 1026.37(g)(4), the Bureau would require the disclosure, under revised § 1026.37(g)(4), of construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified in § 1026.37(a)(6), and payoff of unsecured debt, unless those amounts are disclosed under § 1026.37(h)(2)(iii) on the optional alternative calculating cash to close table. This provision is intended to give creditors the flexibility to disclose the payoff of existing liens secured by the property identified in § 1026.37(a)(6) on the payoffs and payments table or to standardize the disclosure of this and other amounts across the calculating cash to close table for transactions with and without sellers by disclosing such amounts under revised § 1026.37(g)(4). The Bureau is proposing to revise § 1026.37(h)(2)(iii) to permit disclosure of the total of all payments to third parties not otherwise disclosed under § 1026.37(f) or (g) as a negative or positive number, to revise comment 37(h)(2)(iii)–1 to make conforming amendments, and to add comment 37(h)(2)(iii)–2 to provide clarity on the disclosure of simultaneous loans for subordinate financing.

The Bureau is proposing to revise § 1026.37(h)(2)(iii) to allow for the disclosure of the total of all payments to third parties not otherwise disclosed under § 1026.37(f) or (g) as a positive amount and to make conforming revisions to comment 37(h)(2)(iii)–1, consistent with the proposed revisions discussed in the section-by-section analysis of § 1026.37(g)(4). The Bureau also is proposing to add comment 37(h)(2)(iii)–2 to provide additional clarity on the disclosure of proceeds from a simultaneous loan for subordinate financing on the Loan Estimate for a first-lien transaction disclosed under § 1026.37(h)(2), such as a refinance. Proposed comment 37(h)(2)(iii)–2 would explain that, on the first-lien Loan Estimate, the proceeds of the simultaneous loan for subordinate financing are included, as a positive number, in the total amount disclosed under § 1026.37(h)(2)(iii). On the first-lien Loan Estimate, the total amount disclosed under revised § 1026.37(h)(2)(iii) will be a negative number unless the proceeds from subordinate financing and any amounts entered as credits under comment 37(h)(2)(iii)–1 exceed the total amount of other payoffs and payments that are included in the calculation for the amount disclosed under § 1026.37(h)(2)(iii). The funds from the subordinate financing that will be applied to the first-lien transaction are not included in the estimated total payoffs and payments amount on the simultaneous loan for subordinate financing Loan Estimate.

37(k) Contact Information

The Bureau is proposing to make a technical, non-substantive, amendment to comment 37(k)–3 to correct a typographical error. The Bureau is proposing to replace the current reference to § 1026.38(k)(2) in comment 37(k)–3 with a reference to § 1026.37(k)(2), which describes the disclosure of license numbers or other unique identifiers.

37(l) Comparisons

37(l)(1) In Five Years

37(l)(1)(i)

The Bureau is proposing to make a technical, non-substantive amendment to comment 37(l)(1)(i)–1 to correct a typographical error. The Bureau is proposing to replace the word "fractional" with "functional" in comment 37(l)(1)(i)–1 to conform to the language of comment 37(c)(1)(i)(C)–1.

37(l)(3) Total Interest Percentage

Section 1026.37(l)(3) requires creditors to disclose the total interest percentage (TIP) and provides that the total interest percentage is the total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the principal of the loan. The Bureau explained in the TILA–RESPA Final Rule that prepaid interest is included in the TIP calculation.[80] The Bureau is proposing to amend comment 37(l)(3)–1 to clarify further that prepaid interest is included when calculating the TIP.

37(o) Form of Disclosures

37(o)(4) Rounding

The Bureau understands that there is continued uncertainty about rounding requirements on the Loan Estimate. Section 1026.37(o)(4)(i)(A) requires rounded numbers for the information disclosed pursuant to § 1026.37(b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l), except that the per diem amount required to be disclosed by § 1026.37(g)(2)(iii) and the monthly amounts required to be disclosed by § 1026.37(g)(3)(i) through

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[80] 78 FR 79730, 79982 (Dec. 31, 2013).

(iii) and (g)(3)(v) shall not be rounded. Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed pursuant to § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(3) to be disclosed up to two or three decimal places and the percentage amount disclosed pursuant to § 1026.37(l)(2) to be disclosed up to three decimal places. The Bureau is proposing revisions to § 1026.37(o)(4)(i)(A) and (ii) and to comments 37(o)(4)(i)(A)–1 and 37(o)(4)(ii)–1 to simplify the rounding and disclosure requirements of § 1026.37(o)(4).

The proposed revisions to § 1026.37(o)(4)(i)(A) would clarify that the per diem amount required to be disclosed by § 1026.37(g)(2)(iii) and the monthly amounts required to be disclosed by § 1026.37(g)(3)(i) through (iii) and (g)(3)(v) are rounded to the nearest cent and disclosed to two decimal places. The proposed revision to comment 37(o)(4)(i)(A)–1 adds clarifying language and adds an illustrative example of the disclosure of per diem interest.

The Bureau is proposing revisions to § 1026.37(o)(4)(ii) to simplify the rounding requirements for amounts disclosed under § 1026.37(o)(4)(ii). Proposed § 1026.37(o)(4)(ii) states that the percentage amounts required to be disclosed under paragraphs (b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), (l)(2), and (l)(3) of this section must be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point. Proposed comment 37(o)(4)(ii)–1 illustrates the requirements of § 1026.37(o)(4)(ii) with examples.

Section 1026.38 Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

Section 1026.38 sets forth the content of the Closing Disclosure required by § 1026.19(f) to be provided to the consumer. Comments applicable generally to § 1026.38 are included as commentary to § 1026.38. The Bureau is proposing to add comment 38–4, which would provide options for the disclosure of reductions in principal balance, referred to as a principal curtailments, in various provisions of § 1026.38.

Creditors may use lender credits disclosed under § 1026.38(h)(3) to provide a credit for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3). However, contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, may prevent the creditor from refunding cash to the consumer as lender credits. Therefore, the Bureau is proposing to add comment 38–4, which would provide options for the disclosure of principal curtailments under § 1026.38(g)(4), (j)(4)(i), (t)(5)(vii)(B), and (t)(5)(ix) to provide refunds related to the good faith analysis under § 1026.19(f)(2)(v). The disclosure would contain a statement conveying that the disclosed amount includes a refund for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3) and the amount of such refund under § 1026.19(f)(2)(v). The Bureau seeks comment on whether there is sufficient space in the corresponding rows on the Closing Disclosure for such a statement and whether the Bureau should prescribe a specific statement or permit creditors discretion in developing such statement.

38(a) General Information

38(a)(3) Closing Information

38(a)(3)(iii) Disbursement Date

Section 1026.38(a)(3)(iii) requires disclosure of the disbursement date. In a purchase transaction under § 1026.37(a)(9)(i), the disbursement date is the date the amounts disclosed under § 1026.38(j)(3)(iii) (cash to close from or to borrower) and (k)(3)(iii) (cash from or to seller) are expected to be paid to the consumer and seller. In a non-purchase transaction, the disbursement date is the date the amounts disclosed under § 1026.38(j)(2)(iii) (loan amount) or (t)(5)(vii)(B) (payoffs and payments) are expected to be paid to the consumer or a third party. As discussed below, the Bureau is proposing to revise § 1026.38(a)(3)(iii) to provide that the disbursement date in non-purchase transactions is the date some or all of the loan amount is expected to be paid to the consumer or a third party, and to add comment 38(a)(3)(iii)–1 to clarify to disbursement date for simultaneous loans for subordinate financing.

Currently, if a non-purchase transaction is disclosed using the alternative disclosures, the disbursement date will be the date amounts disclosed under § 1026.38(t)(5)(vii)(B) are expected to be paid to the consumer or a third party. If a non-purchase transaction is not disclosed using the alternative disclosures, the disbursement date will be the date the loan amount disclosed under § 1026.38(j)(2)(iii) is expected to be paid to the consumer or a third party. Regardless of whether a non-purchase transaction is disclosed using the alternative disclosures, the Closing Disclosure for the non-purchase transaction will include the loan amount under § 1026.38(b). Therefore, to streamline the provision, the Bureau is proposing to revise § 1026.38(a)(3)(iii) regarding the disbursement date for non-purchase transactions by replacing the cross-references to § 1026.38(j)(2)(iii) and (t)(5)(vii)(B) with a cross-reference to § 1026.38(b). In addition, because the entire loan amount may not be disbursed at one time, such as in non-purchase construction transactions, the Bureau proposes to clarify that the disbursement date is the date some or all of the loan amount is expected to be paid to the consumer or a third party.

The Bureau is also proposing to add comment 38(a)(3)(iii)-1 to clarify that, although a simultaneous loan for subordinate financing is disclosed as a purchase transaction under § 1026.37(a)(9)(i), the disbursement date for this type of transaction will be the same as the disbursement date for non-purchase transactions. The comment would clarify that the disbursement date on the Closing Disclosure for a simultaneous loan for subordinate financing is the date some or all of the loan amount disclosed under § 1026.38(b) is expected to be paid to the consumer or a third party. The Bureau seeks comment on all aspects of this proposal, including whether there are any unintended consequences from structuring the disclosure of the disbursement date in this manner, or if there is a better way to ensure clarity and consistency.

38(a)(3)(vii) Sale Price

In a transaction where there is no seller, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. Comment 38(a)(3)(vii)–1 explains that, to comply with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine loan approval or, if none has been obtained, the estimated value of the property. In the latter case, the creditor may use the estimate provided by the consumer at application, or, if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, it may disclose that estimate. The Bureau is proposing to revise comment 38(a)(3)(vii)–1 to clarify that, if the creditor has performed its own estimate of the property value for purposes of approving the credit transaction by the time the disclosure is provided to the consumer, the creditor must disclose the estimate it used for purposes of approving the credit transaction.

38(a)(4) Transaction Information

Section 1026.38(a)(4) requires the disclosure of specific information about the transaction, including the name and address of the seller. Comment 38(a)(4)–2 clarifies that, in transactions where there is no seller, such as in a refinancing or home equity loan, the disclosure of the seller's name and address required by § 1026.38(a)(4)(ii) may be left blank. The Bureau is proposing to revise comment 38(a)(4)–2 to include simultaneous loans for subordinate financing in purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction in transactions for which a creditor may leave the § 1026.38(a)(4)(ii) disclosure blank and omit the seller's name. The Bureau specifically seeks comment on whether the borrower or seller would benefit if the Closing Disclosure for the simultaneous loan for subordinate financing in purchase transactions contains the seller's name and address even if the first-lien Closing Disclosure will record the entirety of the seller's transaction, including the seller's name and address.

Section 1026.38(a)(4)(i) also requires the consumer's name and mailing address, labeled ''Borrower.'' Section 1026.2(a)(11) defines ''consumer'' as a natural person to whom consumer credit is offered or extended. The definition further provides that, in rescindable transactions, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest. The Bureau proposes to add new comment 38(a)(4)–4 to clarify that, in rescindable transactions, § 1026.38(a)(4)(i) requires disclosure of the name and mailing address of each natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest and regardless of whether that person is an obligor.

38(d) Costs at Closing

38(d)(2) Alternative Table for Transactions Without a Seller and Simultaneous Loans for Subordinate Financing

Section 1026.38(d)(2) only permits creditors to use the optional alternative cash to close table on the Closing Disclosure in transactions without seller where the creditor disclosed the optional alternative calculating cash to close table under § 1026.37(d)(2) on the Loan Estimate. The Bureau has provided informal guidance that, in purchase transactions with a simultaneous loan for subordinate financing, the optional alternative table may be used for the simultaneous subordinate financing Closing Disclosure if the first-lien Closing Disclosure records the entirety of the seller's transaction and the seller did not contribute to the subordinate financing. The Bureau is proposing to amend § 1026.38(d)(2) and comment 38(d)(2)–1 to permit explicitly the use of the optional alternative cash to close table for simultaneous loans for subordinate financing in purchase transactions if the first-lien Closing Disclosure records the entirety of the seller's transaction. The Bureau specifically seeks comment on whether allowing a creditor to use the optional, alternative cash to close table for disclosure of simultaneous loans for subordinate financing in purchase transactions only if the first-lien Closing Disclosure records the entirety of the seller's transaction is an appropriate limitation.

38(e) Alternative Calculating Cash To Close Table for Transactions Without a Seller and Simultaneous Loans for Subordinate Financing

Section 1026.38(e) provides for the disclosure of an alternative calculation of an estimate of cash needed from the consumer at consummation for transactions without a seller, using the heading ''Calculating Cash to Close.'' As discussed in the section-by-section analysis of § 1026.37(h) above, the Bureau seeks comment on the calculating cash to close table generally. The Bureau is proposing to revise § 1026.38(e) and comment 38(e)–1 to clarify when a simultaneous loan for subordinate financing in a purchase transaction may use the optional alternative calculating cash to close table and to add comment 38(e)–6 to specify which amounts are disclosed under the subheading ''Loan Estimate'' on the Closing Disclosure's calculating cash to close table.

Specifically, § 1026.38(e) requires a creditor to disclose the optional alternative calculating cash to close table when the creditor disclosed the optional alternative table on the Loan Estimate under § 1026.37(h)(2). The Bureau has provided informal guidance that, in purchase transactions with a simultaneous loan for subordinate financing, the optional alternative calculating cash to close table may be used for the simultaneous subordinate financing Closing Disclosure if the first-lien Closing Disclosure records the entirety of the seller's transaction and the seller did not contribute to the subordinate financing. The Bureau is proposing to amend § 1026.38(e) and comment 38(e)–1 to permit explicitly the use of the optional alternative calculating cash to close table for simultaneous loans for subordinate financing in purchase transactions, if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of the alternative calculating cash to close table is required if the alternative calculating cash to close table was provided on the Loan Estimate.

The Bureau proposes comment 38(e)–6 to clarify that the amounts disclosed under the subheading ''Loan Estimate'' under § 1026.38(e)(1)(i), (2)(i), (4)(i) and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer. This is true whether the amounts on the most recent Loan Estimate provided to the consumer reflected updated amounts provided for informational purposes only or the amounts used for purposes of determining good faith under § 1026.19(e)(3). The Bureau believes that the consumer should always have the benefit of receiving the most accurate and current information available, even if the disclosures are outside the tolerances or not relevant for the tolerances. The Bureau further believes that, for purposes of comparison, the amounts disclosed under the subheading ''Loan Estimate'' on the Closing Disclosure's alternative calculating cash to close table should reflect the most recent information given the consumer, again, regardless of whether that information was provided for purposes of resetting the tolerances or for information purposes only.

The Bureau notes that the amounts disclosed on the Closing Disclosure's alternative calculating cash to close table under the subheadings ''Loan Estimate'' and ''Final'' are not, in and of themselves, subject to the § 1026.19(e)(3) good faith standard. These amounts are disclosed based on the best information reasonably available to the creditor at the time the disclosure is provided. Any increases or changes to the amounts, based on the best information reasonably available to the creditor, do not result in any separate violation of any standard under Regulation Z. For purposes of determining good faith under § 1026.19(e)(3), the amounts used are the amounts disclosed under § 1026.37. The amounts used for determining good faith may be disclosed over multiple Loan Estimates, or even corrected Closing Disclosures, depending upon the facts and circumstances of the transaction. Accordingly, good faith cannot be determined based on a comparison of the amounts disclosed under the subheadings "Loan Estimate" and "Final" on the Closing Disclosure's alternative calculating cash to close table.

The Bureau seeks comment on this approach. In particular, the Bureau seeks comment on whether the disclosure of the amounts on the most recent Loan Estimate on the alternative calculating cash to close table provides a helpful comparison to consumers with the final amounts disclosed on the Closing Disclosure. The Bureau seeks comment on other alternatives to provide consumers with a comparison of estimated and final amounts.

38(e)(2) Total Closing Costs

38(e)(2)(ii)

For transactions using the alternative calculating cash to close table, § 1026.38(e)(2)(ii) requires the creditor to disclose the amount of total closing costs disclosed under § 1026.38(h)(1). The "Final" total closing costs disclosed under § 1026.38(e)(2)(ii) show an amount owed by the consumer; therefore, the Bureau specified that the total closing costs be disclosed as a negative number. However, lender credits under § 1026.38(h)(3) may sometimes exceed the subtotal of closing costs under § 1026.38(h)(2), resulting in a net credit to the consumer. In that case, the total closing costs disclosed under § 1026.38(e)(2)(ii) should be disclosed as a positive number, to reflect the expected credit to the consumer. Therefore, the Bureau is proposing to revise § 1026.38(e)(2)(ii) to explain that the amount disclosed under that section is disclosed as a negative number if the amount disclosed under § 1026.38(h)(1) is a positive number and is disclosed as a positive number if the amount disclosed under § 1026.38(h)(1) is a negative number.

38(e)(2)(iii)

Section 1026.38(e)(2)(iii)(A)(*3*) provides that, if the amount of closing costs actually charged to the consumer exceeds the limitations on increases in closing costs under § 1026.19(e)(3), the creditor must provide a statement that such increase exceeds the legal limits by the dollar amount of the excess and, if any refund is provided under § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under § 1026.38(h)(3). As discussed above in the section-by-section analysis of proposed comment 38–4, the Bureau would clarify that, when contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the borrower as lender credits, a reduction in principal balance (principal curtailment) may be used to provide a refund under § 1026.19(f)(2)(v). Such principal curtailment would be disclosed as a negative number under § 1026.38(g)(4) or (t)(5)(vii)(B) for transactions using the optional alternative calculating cash to close table under § 1026.38(e). Accordingly, the Bureau is proposing to revise § 1026.38(e)(2)(iii)(A)(*3*) and comment 38(e)(2)(iii)(A)–3 to allow a creditor to provide a statement directing the consumer to the disclosure of the principal curtailment under § 1026.38(g)(4) or (t)(5)(vii)(B), rather than directing the consumer to the disclosure of a refund under § 1026.38(h)(3).

38(e)(3) Closing Costs Paid Before Closing

38(e)(3)(iii)

38(e)(3)(iii)(B)

Comment 38(e)(3)(iii)(B)–1 discusses the circumstances under which the creditor gives a statement that the amount under the subheading "Final" under § 1026.38(e)(3)(ii) is equal to the amount disclosed under the subheading "Loan Estimate" under § 1026.38(e)(3)(i) and, in so doing, refers to an amount of "$0" under the subheading "Final." The Bureau proposes two technical corrections in comment 38(e)(3)(iii)(B)–1. First, the Bureau is proposing to change "$0" to "$0.00" to reflect the required disclosure of the amount disclosed under § 1026.38(e)(3)(ii) to two decimal places under § 1026.38(t)(4). Second, the reference to "settlement agent" would be removed from comment 38(e)(3)(iii)(B)–1. As the introductory paragraph to § 1026.38(e) makes clear, the responsibility to provide the § 1026.38(e) disclosures lies with the creditor, not the settlement agent.

38(e)(4) Payoffs and Payments

38(e)(4)(ii)

Section 1026.38(e)(4)(ii) provides that the total amount of payoffs and payments made to third parties disclosed under § 1026.38(t)(5)(vii)(B), to the extent known, is disclosed as a negative number. The requirement to disclose a negative number under § 1026.38(e)(4)(ii) supposes that the amount disclosed under § 1026.38(t)(5)(vii)(B) will always be a positive number. The Bureau is proposing to revise § 1026.38(e)(4)(ii) to allow for the disclosure of a negative or positive amount, based on the facts and circumstances of the transaction.

As discussed in the section-by-section analysis of § 1026.38(t)(5)(vii) below, proposed comment 38(t)(5)(vii)(B)–1 would clarify that the amount of payoffs and payments disclosed under § 1026.38(t)(5)(vii)(B) may include amounts that offset payoffs and payments. As a result, if the aggregate offsets exceed the payoffs and payments amounts, then the amount disclosed under § 1026.38(t)(5)(vii)(B) will be negative. Therefore, the Bureau is proposing to revise § 1026.38(e)(4)(ii) such that the amount disclosed under revised § 1026.38(e)(4)(ii) is disclosed as a negative number if the amount disclosed under § 1026.38(t)(5)(vii)(B) is a positive number, signifying amounts owed by the consumer, and is disclosed as a positive number if the amount disclosed under § 1026.38(t)(5)(vii)(B) is a negative number, signifying amounts due to the consumer.

38(f) Closing Cost Details; Loan Costs

The Bureau is proposing to add comment 38(f)–2. Consistent with proposed comments 37(f)–3 and 37(f)(6)–3 above, proposed comment 38(f)–2 would provide that construction loan inspection and handling fees are loan costs associated with the transaction for purposes of the Closing Disclosure under § 1026.38(f). The proposed new comment would also add a cross-reference to proposed comments 37(f)–3, 37(f)(6)–3, and app. D–7.viii, making those comments' discussions of inspection and handling fees for the staged disbursement of construction loan proceeds explicitly applicable to the disclosures required by § 1026.38(f).

38(g) Closing Cost Details; Other Costs

38(g)(1) Taxes and Other Government Fees

Section 1026.38(g)(1) requires creditors to disclose an itemization of each amount that is expected to be paid to State and local governments for taxes and government fees, including recording fees. Closing Disclosure form H–25 of appendix H illustrates such disclosures on a line labeled "Recording Fees," with the additional labels "Deed" and "Mortgage," respectively.

The Bureau understands that there is uncertainty as to how recording fees should be disclosed on the Closing Disclosure. Consistent with form H–25 of appendix H, the Bureau proposes to amend § 1026.38(g)(1) to clarify that the total amount of fees for recording deeds and the total amount of fees for recording security instruments must each be disclosed on the first line under the subheading "Taxes and Other Government Fees" before the columns described in § 1026.38(g). The Bureau also proposes to amend § 1026.38(g)(1) to clarify that the total amounts paid for recording fees (including but not limited to fees for recording deeds and security instruments) must be disclosed in the applicable column described in § 1026.38(g). Finally, the Bureau proposes to add new comment 38(g)(1)–3 to clarify the labels for recording fees on form H–25 of appendix H.

38(g)(2) Prepaids

Comment 38(g)(2)–3 provides that $0 must be disclosed if interest is not collected for a portion of a month or other period between closing and the date from which interest will be collected with the first monthly payment. The Bureau is proposing to revise comment 38(g)(2)–3 to require $0.00 to be disclosed because the amount disclosed under § 1026.38(g)(2) is disclosed to two decimal places under § 1026.38(t)(4).

38(g)(4) Other

Comment 38(g)(4)–1 clarifies that the charges for services disclosed under § 1026.38(g)(4) include all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate transaction but not required by the creditor or disclosed elsewhere in § 1026.38. Currently, amounts for construction costs, payoff of existing liens, or payoff of unsecured debt may be, but are not required to be, disclosed under § 1026.38(g)(4). As discussed in more detail below, and consistent with the proposed revisions discussed in the section-by-section analysis of § 1026.37(g)(4), the Bureau is proposing to revise comment 38(g)(4)–1 to require that construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.38(a)(3)(vi), and payoff of unsecured debt be disclosed under § 1026.38(g)(4), unless those items are disclosed under § 1026.38(t)(5)(vii)(B) on the optional alternative calculating cash to close table.

The Bureau expects consumer understanding will be enhanced by the clear and conspicuous disclosure of these amounts in corresponding tables on the Loan Estimate and Closing Disclosure. The proposed revisions to comment 37(g)(4)–4 discussed in the section-by-section analysis of § 1026.37(g)(4), together with the proposed revisions to comment 38(g)(4)–1, will also create greater consistency between the Loan Estimate and Closing Disclosure. The Bureau believes this is an appropriate and consistent place to list the three items, because they are all other closing costs of the mortgage transaction.

The Bureau considered requiring the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt under the summaries of transactions table on the Closing Disclosure under § 1026.38(j)(1)(v) instead of as "closing costs" under §§ 1026.37(g)(4) and 1026.38(g)(4). Disclosing these costs on the summaries of transactions table would not provide for comparability between the Loan Estimate and Closing Disclosure, however, because the Loan Estimate does not have a summaries of transactions table.

The Bureau also considered requiring the disclosure of construction costs only on an addendum, instead of under § 1026.37(g)(4) on the Loan Estimate and § 1026.38(g)(4) on the Closing Disclosure. (The Bureau did not consider the disclosure of the payoff of existing liens or unsecured debt on an addendum because those amounts are necessarily factored into the cash to close calculation and must be disclosed either explicitly or implicitly in the calculating cash to close table.) The construction costs would then be factored into the calculating cash to close table calculations in conjunction with the sale price to yield an accurate cash to close amount. However, this approach could add complexity to the calculations required on the Closing Disclosure because amounts disclosed under § 1026.38(j)(1)(ii) and (k)(1)(ii) would no longer be the same.

For the foregoing reasons, the Bureau is proposing to revise comment 38(g)(4)–1 to reflect the disclosure of construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified in § 1026.38(a)(3)(vi), and payoff of unsecured debt, even if payable directly or indirectly to the creditor, under § 1026.38(g)(4) unless those items are disclosed under § 1026.38(t)(5)(vii)(B) on the optional alternative calculating cash to close table. See the section-by-section analysis of § 1026.38(t)(5)(vii)(B) below for a discussion of the proposed change to the requirement to include payoff of existing liens secured by the property identified in § 1026.38(a)(3)(vi) in the payoffs and payments calculation on the optional alternative calculating cash to close table. The Bureau is also proposing to revise comment 38(g)(4)–1 to cross-reference proposed comment app. D–7.vii for an explanation of the disclosure of construction costs for a construction or construction-permanent loan and proposed comment app. D–7.viii for an explanation of the disclosure of construction loan inspection and handling fees.

The Bureau also is proposing to revise comment 38(g)(4)–1 to clarify that inspection fees disclosed under § 1026.38(g)(4) are for pre-consummation inspection fees, not post-consummation inspection fees, such as those often associated with construction loans. As discussed in the section-by-section analysis of § 1026.38(f), post-consummation inspection fees would be disclosed in an addendum attached as an additional page after the last page of the Closing Disclosure. Revised comment 38(g)(4)–1 would also clarify that, if amounts for construction costs are contracted to be paid at closing, even though they will be disbursed after closing, they are disclosed in the paid "At Closing" column.

38(i) Calculating Cash To Close

Section 1026.38(i) requires the disclosure of the calculation of an estimate of cash needed from the consumer at consummation of the transaction, using the heading "Calculating Cash to Close." The Bureau is proposing amendments to § 1026.38(i) and its commentary regarding the calculating cash to close table on the Closing Disclosure pursuant to its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a). The Bureau believes that, with the proposed amendments, this disclosure will effectuate the purposes of TILA by facilitating the informed use of credit. Providing consumers with information about the cash to close amount, its critical components, and how such amounts changed from the estimated amounts disclosed on the Loan Estimate helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). As discussed in the section-by-section analysis of § 1026.37(h) above, the Bureau seeks comment on the calculating cash to close table generally.

The Bureau is proposing to revise comment 38(i)–2 to streamline the comment and clarify how amounts should be disclosed under the subheading "Loan Estimate" on the Closing Disclosure's calculating cash to close table. The Bureau is proposing to revise comment 38(i)–3 for consistency with proposed changes discussed in the section-by-section analysis of § 1026.38(i)(7) below.

The Bureau is proposing to add comment 38(i)–5 to clarify that the amounts disclosed under the subheading "Loan Estimate" under § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer. This is true whether the amounts on the most recent Loan Estimate provided to the consumer reflect updated amounts provided for informational purposes only or the amounts to be used for purposes of determining good faith under § 1026.19(e)(3). The Bureau believes that the consumer should always have the benefit of receiving the most accurate and current information available, even if the disclosures are outside the tolerances or not relevant for the tolerances. The Bureau further believes that, for purposes of comparison, the amounts disclosed under the subheading "Loan Estimate" on the Closing Disclosure's calculating cash to close table should reflect the most recent information given the consumer, again, regardless of whether that information was provided for purposes of resetting the tolerances or for information purposes only.

The Bureau notes that the disclosures on the Closing Disclosure's calculating cash to close table under the subheadings "Loan Estimate" and "Final" are not, in and of themselves, subject to the § 1026.19(e)(3) good faith standard. These amounts are disclosed based on the best information reasonably available to the creditor at the time the disclosure is provided and any increases or changes to the amounts based on the best information reasonably available to the creditor do not result in any separate violation of any standard under Regulation Z. For purposes of determining good faith under § 1026.19(e)(3), the amounts used are the amounts disclosed under § 1026.37, and may be disclosed over multiple Loan Estimates, or even corrected Closing Disclosures, depending upon the facts and circumstances of the transaction. Accordingly, good faith cannot be determined based on a comparison of the amounts disclosed under the subheadings "Loan Estimate" and "Final" on the Closing Disclosure's calculating cash to close table.

The Bureau seeks comment on this approach. In particular, the Bureau seeks comment on whether the disclosure of the amounts on the most recent Loan Estimate on the calculating cash to close table provides a helpful comparison to consumers with the final amounts disclosed on the Closing Disclosure. The Bureau seeks comment on other alternatives to provide consumers with a comparison of estimated and final amounts.

38(i)(1) Total Closing Costs

38(i)(1)(iii)

Section 1026.38(i)(1)(iii)(A) specifies that, if the amount of closing costs disclosed under the subheading "Final" in the row labeled "Total Closing Costs (J)" is different than the estimated amount of such costs as shown on the Loan Estimate (unless the difference is due to rounding), the creditor must state, under the subheading "Did this change?," that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5) and include a reference to such disclosures, as applicable. Section 1026.38(i)(1)(iii)(A)(*3*) also requires a statement that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) if a credit is provided under § 1026.19(f)(2)(v). Comment 38(i)(1)(iii)(A)–3 provides guidance regarding these statements. The Bureau is proposing to revise § 1026.38(i)(1)(iii)(A)(*3*) and comment 38(i)(1)(iii)(A)–3 to provide additional options for disclosing refunds to consumers.

As discussed above in the section-by-section analysis of proposed comment 38–4, the Bureau is proposing to clarify that, when contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the consumer as lender credits, a reduction in principal balance (principal curtailment) may be disclosed, as a negative number, under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(ix) to provide a refund under § 1026.19(f)(2)(v). The Bureau is proposing to revise both § 1026.38(i)(1)(iii)(A)(*3*) and comment 38(i)(1)(iii)(A)–3 to allow a creditor to provide a statement directing the consumer to the disclosure of a principal reduction (principal curtailment) under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(ix) if a principal curtailment is used to provide such refund. As a result of these proposed clarifications, the Bureau also is proposing to clarify that the examples provided by form H–25(F) of appendix H only relate to statements provided under § 1026.38(h)(3).

38(i)(2) Closing Costs Paid Before Closing

38(i)(2)(iii)

38(i)(2)(iii)(B)

Comment 38(i)(2)(iii)(B)–1 discusses the circumstances under which the creditor gives a statement that the amount disclosed under the subheading "Final" under § 1026.38(i)(2)(ii) is equal to the amount disclosed under the subheading "Loan Estimate" under § 1026.38(i)(2)(i) and, in so doing, refers to an amount of "$0" under the subheading "Final." The Bureau is proposing to change $0 to $0.00 because the amount disclosed under § 1026.38(i)(2)(ii) is disclosed to two decimal places under § 1026.38(t)(4) .

38(i)(3) Closing Costs Financed

Section 1026.38(i)(3) requires the disclosure of the actual amount of the closing costs that are to be paid out of loan proceeds, as a negative number, and a comparison of the estimated and actual amounts of the closing costs that are to be paid out of loan proceeds. If the amount under the subheading "Final" in the row labeled "Closing Costs Financed (Paid from your Loan Amount)" is different than the estimated amount (unless the excess is due to rounding), the creditor or closing agent must state under the subheading "Did this change?" that the consumer included these closing costs in the loan amount, which increased the loan amount. The Bureau is proposing to add comment 38(i)(3)–1 to explain how to calculate closing costs financed and to add comment 38(i)(3)–2 to clarify the loan amount that is used in the closing costs financed calculation.

Although the Loan Estimate has commentary explaining how to perform the closing costs financed calculation (see the section-by-section analysis of § 1026.37(h)(1)(ii)), the Closing Disclosure does not have such commentary. Therefore, the Bureau is proposing to add comment 38(i)(3)–1 to explain that the amount of closing costs financed disclosed under § 1026.38(i)(3) is determined by subtracting the total amount of payments to third parties not otherwise disclosed under § 1026.38(f) and (g), which may include, for example, the sale price of the property disclosed under § 1026.38(j)(1)(ii), from the loan amount disclosed under § 1026.38(b). If the result of the calculation is zero or negative, the amount of $0.00 would be disclosed under § 1026.38(i)(3). If the result of the calculation is positive, that amount would be disclosed as a negative number under § 1026.38(i)(3), but only to the extent that that the absolute value of the amount disclosed under § 1026.38(i)(3) does not exceed the total amount of closing costs disclosed under § 1026.38(h)(1). The total amount of closing costs disclosed under § 1026.38(h)(1) would never be less than zero because, if the total amount of closing costs disclosed under § 1026.38(h)(1) is a negative number, the amount of $0.00 would be disclosed under § 1026.38(i)(3).

Consistent with proposed comment 37(h)(1)(ii)–2, the Bureau is proposing to add comment 38(i)(3)–2 to clarify that the loan amount disclosed under § 1026.38(b) is the total amount the consumer will borrow, as reflected by the face amount of the note, which is consistent with proposed revisions to § 1026.37(b)(1), discussed above. The comment would also explain that financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount. The addition of this comment would clarify that regardless of how the term "loan amount" is used by creditors or in relation to programmatic requirements of specific loan programs, for purposes of the Closing Disclosure, the amount disclosed as the loan amount, and the basis for the calculating cash to close table calculations, is the total amount the consumer will borrow as reflected in the face amount of the note. This definition does not affect how other agencies may define or use similar terms for purposes of their own programmatic requirements. For example, the "Base Loan Amount" and "Total Loan Amount" for loans made under programs of the Federal Housing Administration may not be the same as the loan amount required to be disclosed under § 1026.38(b).

38(i)(4) Down Payment/Funds From Borrower

Section 1026.38(i)(4)(ii)(A) requires the down payment amount in a purchase transaction as defined in § 1026.37(a)(9)(i) to be disclosed as a positive number. In these transactions, the down payment is calculated as the difference between the purchase price of the property and the principal amount of the credit extended. The calculation does not capture the amount of existing loans, assumed or taken subject to, disclosed under § 1026.38(j)(2)(iv). Section 1026.38(i)(4)(ii)(B) requires that, in all other transactions, the "Funds from Borrower" is determined in accordance with § 1026.38(i)(6)(iv). As discussed in more detail below, the Bureau is proposing to revise § 1026.38(i)(4)(ii)(A) to account for any amount disbursed to the consumer or used at the consumer's discretion at consummation of the transaction in purchase transactions, to make conforming revisions to § 1026.38(i)(4)(ii)(B), to revise comment 38(i)(4)(ii)(A)–1 to explain the down payment calculation, to add comment 38(i)(4)(ii)(A)–2 to explain the amount disclosed as "Funds for Borrower," and to revise comments 38(i)(4)(ii)(B)–1 and 38(i)(4)(iii)(A)–1 to make conforming revisions.

For the reasons discussed in the section-by-section analysis of § 1026.37(h)(1)(iii) above, the Bureau is proposing to revise § 1026.38(i)(4)(ii)(A) to specify that, in a purchase transaction as defined in § 1026.37(a)(9)(i), the creditor subtracts the sum of the loan amount and any amount for loans assumed or taken subject to from the sale price of the property, except when the sum of the loan amount and any amount for loans assumed or taken subject to exceed the sale price of the property. When the sum of the loan amount and any amount for existing loans assumed or taken subject to exceeds the sale price of the property, the creditor instead calculates the funds from the consumer in accordance with § 1026.38(i)(6)(iv). New comment 38(i)(4)(ii)(A)–2 would explain the amount that the creditor discloses under § 1026.38(i)(4)(ii)(A)(*2*) under the funds for borrower calculation under § 1026.38(i)(6)(iv). See the section-by-section analysis of § 1026.38(i)(6)(iv) below for a discussion of the proposed revisions to that section. The Bureau is also proposing conforming amendments to § 1026.38(i)(4)(ii)(B) and comments 38(i)(4)(ii)(B)–1 and 38(i)(4)(iii)(A)–1.

The Bureau recognizes that some loan programs require borrowers to provide minimum cash investments, which, under the regulations or requirements of those loan programs, may be referred to as "down payments." Revised comment 38(i)(4)(ii)(A)–1 would explain the down payment calculation that must be followed for accurate disclosure of the down payment amount on the Closing Disclosure. The comment would also explain that the minimum cash investments required of borrowers under some loan programs are not necessarily reflected in the down payment disclosure, and accurate disclosure of the down payment does not affect compliance or non-compliance with such loan programs' requirements.

To conform with proposed clarifications discussed in the section-by-section analysis of § 1026.37(h)(1)(iii) and (v) above, the Bureau is proposing to revise comment 38(i)(4)(ii)(B)–1 to clarify that the "total amount of all existing debt being satisfied in the real estate transaction" means the sum of amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The Bureau seeks comment whether defining the phrase "total amount of all existing debt being satisfied by the transaction" to mean specifically amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive and how else the Bureau might provide greater clarity around amounts that must be included in this calculation as part of the "total amount of all existing debt being satisfied by the transaction."

Consistent with proposed revisions to § 1026.37(h)(1)(iii) and (v) above, the Bureau is further proposing to revise comment 38(i)(4)(ii)(B)–1 to account for the amount of existing loans "assumed or taken subject to" disclosed under § 1026.38(j)(2)(iv). The Bureau also is proposing a technical correction in comment 38(i)(4)(ii)(B)–1 to change $0 in reference to the final amount to $0.00 because the amount disclosed under § 1026.38(i)(4)(ii) is disclosed to two decimal places under § 1026.38(t)(4).

38(i)(5) Deposit

The Bureau is proposing a technical correction in comment 38(i)(5)–1 to specify that, when no deposit is paid in connection with a purchase transaction, the amount disclosed on the Closing Disclosure under § 1026.38(i)(5)(ii) is $0.00 because the amount disclosed under § 1026.38(i)(5)(ii) is disclosed to two decimal places under § 1026.38(t)(4).

38(i)(6) Funds for Borrower

38(i)(6)(ii)

Comment 38(i)(6)(ii)–1 provides clarification about how the actual "Funds for Borrower" amount is determined under § 1026.38(i)(6)(iv) and to whom such amount is disbursed. The Bureau is proposing to revise comment 38(i)(6)(ii)–1 to conform to proposed revisions and clarifications discussed in the section-by-section analysis of § 1026.38(i)(6)(iv) below. The Bureau is proposing to add comment 38(i)(6)(ii)–2 to conform to proposed revisions to comment 37(h)(1)(v)–1 discussed in the section-by-section analysis of § 1026.37(h)(1)(v) above.

38(i)(6)(iv)

Section 1026.38(i)(6)(iv) provides that the "Funds for Borrower" disclosed under § 1026.38(i)(4)(ii)(B) and "Funds from Borrower" disclosed under

§ 1026.38(i)(6)(ii) are determined by subtracting the principal amount of the credit extended (excluding closing costs financed, disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the real estate consummation and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)). This calculation does not capture the amount of existing loans, assumed or taken subject to, disclosed under § 1026.38(j)(2)(iv). As discussed in more detail below, the Bureau is proposing to revise § 1026.38(i)(6)(iv) to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction in purchase transactions and improve clarity, consistent with the proposed revisions discussed in the section-by-section analysis of § 1026.37(h)(1)(v).

The Bureau is proposing to revise § 1026.38(i)(6)(iv) consistent with proposed revisions discussed in the section-by-section analysis of § 1026.37(h)(1)(v) above. The Bureau is proposing to revise § 1026.38(i)(6)(iv) to account for the amount of existing loans, assumed or taken subject to, disclosed under § 1026.38(j)(2)(iv). The Bureau also is proposing to revise § 1026.38(i)(6)(iv) to clarify that the phrase "total amount of all existing debt being satisfied by the transaction" means amounts that are disclosed in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v). The Bureau seeks comment whether defining the phrase "total amount of all existing debt being satisfied by the transaction" to mean amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive and how else the Bureau might provide greater clarity around amounts that must be included in this calculation as part of the "total amount of all existing debt being satisfied by the transaction." The Bureau is proposing technical corrections to § 1026.38(i)(6)(iv)(A), (B), and (C) to change $0 in reference to the amounts under § 1026.38(i)(4)(ii) and (6)(ii) to $0.00 because the final amounts disclosed under § 1026.38(i)(4)(ii) and (6)(ii) are disclosed to two decimal places under § 1026.38(t)(4)

38(i)(7) Seller Credits

Section 1026.38(i)(7) requires creditors to compare the amount of seller credits disclosed on the Loan Estimate under § 1026.37(h)(1)(vi) to the amount disclosed on the Closing Disclosure under § 1026.38(j)(2)(v). If there is a difference (for reasons other than rounding), § 1026.38(i)(7)(iii)(A) requires the creditor to disclose a statement that the consumer should see the seller credits disclosed under § 1026.38(j)(2)(v). However, § 1026.38(j)(2)(v) and comment 38(j)(2)(v)–1 state that only general (*i.e.,* lump sum) seller credits are disclosed under § 1026.38(j)(2)(v), whereas seller credits attributable to a specific cost should be reflected in the seller-paid column in the Closing Cost Details tables under § 1026.38(f) or (g).

Consistent with § 1026.38(j)(2)(v) and comment 38(j)(2)(v)–1, the proposed amendment to § 1026.38(i)(7)(iii)(A) would clarify that, if there is a difference between the amount of seller credits disclosed under § 1026.37(h)(1)(vi) and that disclosed under § 1026.38(j)(2)(v) that is not attributed to rounding of the disclosed under § 1026.37(h)(1)(vi), the creditor must disclose a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) and, as applicable, in the seller-paid column under § 1026.38(f) or (g). The Bureau also proposes new comment 38(i)(7)(iii)(A)–1 with examples of the required statement.

38(i)(8) Adjustments and Other Credits

38(i)(8)(i)

The Bureau is proposing a technical correction in § 1026.38(i)(8)(i) to remove the phrase "rounded to the nearest whole dollar." The amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii) that is required to be disclosed under § 1026.38(i)(8)(i) is already rounded to the nearest whole dollar under § 1026.37(o)(4)(i)(A).

38(i)(8)(ii)

Section 1026.38(i)(8)(ii) provides that the amount disclosed is the total of the amounts due from the borrower disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) and (v) through (x), reduced by the amounts already paid by or on behalf of the borrower disclosed on the Closing Disclosure under § 1026.38(j)(2)(vi) through (xi). However, amounts disclosed under § 1026.38(j)(1)(iii) and (v) may have already been factored into calculations for prior components of the calculating cash to close table, thereby being counted twice. The Bureau is proposing to revise § 1026.38(i)(8)(ii) to clarify that, when amounts disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) are accounted for in the calculations for § 1026.38(i)(4) or (6) as debt being satisfied in the real estate transaction, as provided by proposed revisions to those paragraphs, they are not also counted in the adjustments and other credits calculation under revised § 1026.38(i)(8)(ii). The Bureau also is proposing a technical correction to comment 38(i)(8)(ii)–1, which incorrectly references § 1026.37(h)(7) instead of § 1026.37(h)(1)(vii).

38(i)(8)(iii)

As discussed in the section-by-section analysis of § 1026.38(i)(8)(ii) above, the Bureau is proposing to exclude the amounts disclosed under § 1026.38(j)(1)(iii) or (v) that are accounted for in the calculations for § 1026.38(i)(4) or (6) as debt being satisfied in the real estate transaction, from the calculation of adjustments and other credits under § 1026.38(i)(8)(ii). The Bureau is proposing to revise § 1026.38(i)(8)(iii)(A) to conform with revised § 1026.38(i)(8)(ii).

38(j) Summary of Borrower's Transaction

Comment 38(j)–3 clarifies that certain amounts disclosed under 38(j) are the same as the amounts disclosed under corresponding provisions identified in § 1026.38(k). The Bureau is proposing to revise comment 38(j)–3 to conform with the proposed revisions to § 1026.38(j)(2)(vi) discussed below.

38(j)(1) Itemization of Amounts Due From Borrower

38(j)(1)(ii)

In purchase transactions where there is a seller, the contract sales price is disclosed under § 1026.38(j)(1)(ii), in addition to § 1026.38(a)(3)(vii)(A). To conform with proposed amendments to the commentary of § 1026.37(h)(1) regarding the use of the sale price in the calculating cash to close table calculations on the Loan Estimate for a simultaneous loan for subordinate financing as discussed above, the Bureau is proposing to revise comment 38(j)(1)(ii)–1. Revised comment 38(j)(1)(ii)–1 would clarify that the sale price is not disclosed under § 1026.38(j)(1)(ii) on the simultaneous loan for subordinate financing Closing Disclosure.

38(j)(1)(v)

Section 1026.38(j)(1)(v) requires the creditor to provide a description and the amount of any additional seller-paid items that are reimbursed by the consumer at the real estate closing. It also requires a description and the amount of any other items owed by the consumer not otherwise disclosed under proposed § 1026.38(f), (g), or (j).

Comment 38(j)(1)(v)–1 provides examples of amounts disclosed under § 1026.38(j)(1)(v), which include contractual adjustments not disclosed elsewhere under § 1026.38(j). The Bureau is proposing to revise comment 38(j)(1)(v)–1 to clarify the amounts disclosed can include amounts owed to the seller but payable to the consumer after the real estate closing, providing as examples: Any balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption; any rent the consumer would collect after closing for a time period prior to closing; and any tenant security deposit. Comment 38(j)(1)(v)–1 would also provide that the amounts owed to the seller but payable to the consumer after the real estate closing would be listed under the heading ''Adjustments.''

In addition, as discussed in the section-by-section analysis of § 1026.38(g)(4) above, the Bureau proposes to require the disclosure of payoff of existing liens secured by the property identified in § 1026.38(a)(3)(vi) under § 1026.38(g)(4) on the Closing Disclosure. The Bureau therefore proposes to revise comment 38(j)(1)(v)–2 to conform with revised § 1026.38(g)(4).

38(j)(2) Itemization of Amounts Already Paid by or on Behalf of Borrower

38(j)(2)(vi)

Section 1026.38(j)(2)(vi) provides for the disclosure of ''Other Credits'' and ''Adjustments'' in the summary of the borrower's transaction table. Comment 38(j)(2)(vi)–2 clarifies that any subordinate financing proceeds not otherwise disclosed under § 1026.38(j)(2)(iii) or (iv) must be disclosed under § 1026.38(j)(2)(vi). Comment 38(j)(2)(vi)–5 clarifies that a credit must be disclosed for any money or other payments made by family members or third parties, not otherwise associated with the transaction, along with a description of the nature of the funds provided under § 1026.38(j)(2)(vi). The Bureau is proposing to revise § 1026.38(j)(2)(vi) to explain what items should be disclosed under the heading ''Adjustments.'' Amounts due from the seller to the consumer, under the purchase and sale agreement, would be disclosed under the ''Adjustments'' heading. As discussed in more detail below, the Bureau is proposing to revise comment 38(j)(2)(vi)–2 to clarify that subordinate financing proceeds are disclosed on the first-lien transaction Closing Disclosure and to revise comment 38(j)(2)(vi)–5 to clarify that amounts provided to consumers in advance of the real estate closing are not required to be disclosed. The Bureau also proposes to add new comment 38(j)(2)(vi)–6 to provide an example of type of amounts that would be disclosed under the heading ''Adjustments.''

Comment 38(j)(2)(vi)–2 does not specify whether the disclosure of subordinate financing proceeds not otherwise disclosed under § 1026.38(j)(2)(iii) or (iv) is made on the first-lien transaction Closing Disclosure or on the subordinate financing Closing Disclosure. The Bureau proposes to revise comment 38(j)(2)(vi)–2 to clarify that the disclosure of subordinate financing proceeds under § 1026.38(j)(2)(vi) is made on the first-lien transaction disclosure. Comment 38(j)(2)(vi)–2, as revised, would provide an example of how the disclosure works when a consumer uses a second mortgage to finance part of the purchase price. Comment 38(j)(2)(vi)–2 would also explain that the principal amount of the second loan must be disclosed on the summaries of transactions table for the consumer's transaction either on line 04 under the subheading ''L. Paid Already by or on Behalf of Borrower at Closing,'' or under the subheading ''Other Credits.''

Comment 38(j)(2)(vi)–5 does not explain whether the requirement to disclose a credit for any money or other payments made by family members, not otherwise associated with the transaction, applies to amounts provided to consumers in advance of consummation. The Bureau proposes to revise comment 38(j)(2)(vi)–5 to clarify that the requirement to disclose any money or other payments made by family members or third parties, not otherwise associated with the transaction, only applies to money or payments provided at the real estate closing; amounts provided to consumers in advance of the real estate closing by third parties, including family members, not otherwise associated with the transaction, would not be required to be disclosed under revised § 1026.38(j)(2)(vi).

38(j)(2)(xi)

Comment 38(j)(2)(xi)–1 clarifies that the amounts disclosed under § 1026.38(j)(2)(xi) are for other items not paid by the seller, such as utilities used by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the closing date, and interest on loan assumptions. The Bureau proposing to remove the example of rent collected in advance by the seller from a tenant for a period extending beyond the closing date from comment 38(j)(2)(xi)–1. Proposed comment 38(j)(2)(vi)–6 would add that example as an item to be disclosed under the ''Adjustments.''

38(j)(4) Items Paid Outside of Closing Funds

38(j)(4)(i)

Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed under § 1026.38(j) be marked as ''paid outside of closing'' or ''P.O.C.'' Comment 38(j)(4)(i)–1 explains that the disclosure must include a statement of the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person and cites to an example on form H–25(D) of appendix H of part 1026. As discussed in the section-by-section analysis of proposed comment 38–4 above, the Bureau is proposing to clarify that, when contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the consumer as lender credits, a reduction in principal balance (principal curtailment) may be used to provide a refund under § 1026.19(f)(2)(v). Proposed comment 38–4 would provide options for the disclosure of principal curtailments, including under § 1026.38(j)(4)(i). The Bureau is proposing to revise comment 38(j)(4)(i)–1 to provide a cross reference to comment 38–4. The Bureau is also proposing to clarify that ''a statement of the party making the payment'' means the disclosure must identify the party making the payment.

38(k) Summary of Seller's Transaction

Comment 38(k)–1 explains that § 1026.38(k) does not apply in transactions where there is no seller, such as a refinance transaction. The Bureau is proposing to add additional examples of transactions for which § 1026.38(k) does not apply in revised comment 38(k)–1, such as loans with a construction purpose as defined in § 1026.37(a)(9)(iii) that also do not have a seller or simultaneous loans for subordinate financing if the first-lien Closing Disclosure records the entirety of the seller's transaction.

38(l) Loan Disclosures

38(l)(7) Escrow Account

38(l)(7)(i)

Section 1026.38(l)(7)(i)(A)(*1*), (*2*), and (*4*), as well as (B)(*1*), require certain disclosures based on the tax, insurance, and assessment amounts described in § 1026.37(c)(4)(ii). Section 1026.37(c)(4)(ii), in turn, includes the mortgage-related obligations identified in § 1026.43(b)(8). However, § 1026.37(c)(4)(ii) specifically excludes amounts for mortgage insurance identified in § 1026.4(b)(5) (because amounts for mortgage insurance are already disclosed in the projected payments table under § 1026.37(c)(2)(ii)).

The Bureau is aware that, in some instances, creditors may establish an escrow account for the payment of ongoing mortgage insurance premiums. The Bureau proposes amending § 1026.38(l)(7)(i) and comments 38(l)(7)(i)(A)(*2*)–1, 38(l)(7)(i)(A)(*4*)–1, and 38(l)(7)(i)(B)(*1*)–1 to permit disclosure of such escrow accounts by removing references to § 1026.37(c)(4)(ii) and adding references to mortgage-related obligations, including mortgage insurance, described in § 1026.37(c)(2) or 1026.43(b)(8), as appropriate.

38(l)(7)(i)(A)

38(l)(7)(i)(A)(2)

As discussed below, § 1026.38(l)(7)(i)(A)(*5*) and related commentary explain the escrow account analysis prescribed under Regulation X, 12 CFR 1024.17. The escrow account analysis method can be used as an alternative method to calculate the amounts disclosed pursuant to § 1026.38(l)(7)(i)(A)(*1*) and (*4*). The Bureau is proposing to add new comment 38(l)(7)(i)(A)(*2*)–2 to allow the methods used to calculate escrowed property costs when calculating non-escrowed property cost. The Bureau is seeking comment on the use of the escrow account analysis prescribed in § 1026.38(l)(7)(i)(A)(*5*) to calculate non-escrowed property costs.

38(l)(7)(i)(A)(5)

Section 1026.38(l)(7)(i)(A)(*5*) provides that a creditor complies with the requirements of § 1026.38(l)(7)(i)(A)(*1*) and (*4*) if the creditor bases the numerical disclosures on amounts derived from the escrow account analysis prescribed under Regulation X, 12 CFR 1024.17. Section 1026.38(l)(7)(i)(A)(*4*) requires disclosure of the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation. Section 1026.38(l)(7)(i)(A)(*1*) requires a disclosure, labeled ''Escrowed Property Costs over Year 1,'' calculated as the amount disclosed under § 1026.38(l)(7)(i)(A)(*4*) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation. Creditors may base such disclosures on less than 12 payments if, based on the payment schedule dictated by the legal obligation, fewer than 12 periodic payments will be made to the escrow account during the first year after consummation.

To reduce uncertainty about whether the amounts disclosed under § 1026.38(l)(7)(i)(A)(*1*) and (*4*) should be based on 12 payments or less than 12 payments, the Bureau is proposing to add new comment 38(l)(7)(i)(A)(*5*)–1 to clarify, for example, that creditors may base such disclosures on less than 12 payments if, based on the payment schedule dictated by the legal obligation, fewer than 12 periodic payments will be made to the escrow account during the first year after consummation. Alternatively, § 1026.38(l)(7)(i)(A)(*5*) permits the creditor to base the disclosures required by § 1026.38(l)(7)(i)(A)(*1*) and (*4*) on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, even if those disclosures differ from what would otherwise be disclosed under § 1026.38(l)(7)(i)(A)(*1*) and (*4*), as, for example, when there are fewer than 12 periodic payments scheduled to be made to the escrow account during the first year after consummation.

38(o) Loan Calculations

38(o)(1) Total of Payments

Section 1026.38(o)(1) defines the total of payments, for purposes of the Closing Disclosure, as the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. The Bureau is proposing to adopt tolerances for the total of payments that parallel the statutory tolerances for the finance charge and disclosures affected by the finance charge because, historically, the total of payments has been understood to be a disclosure affected by the finance charge and therefore subject to its tolerances. In the TILA–RESPA Final Rule, to promote consumer understanding, the Bureau adopted a definition of total of payments for purposes of the Closing Disclosure that differs from the statutory definition under TILA section 128(a)(5), which explicitly references finance charges. This in turn may have introduced ambiguity as to whether the total of payments for purposes of the Closing Disclosure is a disclosure affected by the finance charge and therefore subject to the same tolerances.

TILA section 128(a)(5) and (8) requires a creditor to disclose the sum of the amount financed and the finance charge, using the term ''Total of Payments,'' and a descriptive explanation of that term.[81] For transactions subject to § 1026.19(e) and (f), § 1026.38(o)(1) implements this disclosure requirement. TILA section 128(a)(3) and (8) requires a creditor to disclose the finance charge, using that term.[82] As amended by Congress in 1995,[83] TILA section 106(f)(1) sets forth the tolerances for accuracy of the finance charge and other disclosures affected by any finance charge and states that, in connection with credit transactions (not under an open end credit plan) that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate, except for purposes of rescission under TILA section 125, if the amount disclosed as the finance charge (A) does not vary from the actual finance charge by more than $100; or (B) is greater than the amount required to be disclosed.[84] For transactions subject to § 1026.19(e) and (f), § 1026.38(o)(2) implements the finance charge disclosure requirement in TILA section 128(a)(3) and the statutory tolerance provision for the finance charge in TILA section 106(f)(1).

In the TILA–RESPA Final Rule, the Bureau modified the requirement under TILA section 128(a)(5) to disclose the total of payments as the sum of the amount financed and the finance charge to require that a creditor instead disclose the total of payments on the Closing Disclosure as the sum of principal, interest, mortgage insurance, and loan costs. Accordingly, § 1026.38(o)(1) requires the disclosure of the ''Total of Payments,'' using that term and expressed as a dollar amount, and a statement that the disclosure is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. This modification of the total of payments calculation for purposes of the Closing Disclosure results in loan costs that are not components of the finance charge being included in the total of payments. In addition, the modification of the total of payments calculation also results in components of the finance charge being excluded from the total of payments if such components are not interest, loan costs, or included in the principal amount of the loan. As a result, the total of payments is now arguably not a disclosure affected by any finance charge. To apply the tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge unambiguously to the total of payments on the Closing Disclosure, the Bureau proposes to revise § 1026.38(o)(1).

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[81] 15 U.S.C. 1638(a)(5), (8).

[82] 15 U.S.C. 1638(a)(3).

[83] Truth in Lending Act Amendments of 1995, Public Law 104–29, § 3(a), 109 Stat 271 (1995).

[84] 15 U.S.C. 1605(f)(1). As discussed in the section-by-section analysis of 1026.23(g), 15 U.S.C. 1605(f)(2) sets forth specific treatment for the disclosure of the finance charge and other disclosures affected by any finance charge for purposes of rescission under TILA section 125.

The Bureau modified the total of payments in the TILA–RESPA Final Rule because it understood that this disclosure had been unclear to consumers historically. As the Bureau explained in the 2012 TILA–RESPA Proposal and TILA–RESPA Final Rule, a Board-HUD Joint Report analyzing the TILA and RESPA disclosures recommended changes to several disclosures, including the total of payments.[85] The Board's consumer testing found that many consumers did not understand the total of payments and that, even when consumers understood its meaning, most did not consider it important in their decision-making process.[86]

To enhance consumer understanding, in the TILA–RESPA Final Rule, the Bureau modified the requirement of TILA section 128(a)(5) that the total of payments disclose the sum of the amount financed and the finance charge in two ways.[87] First, the Bureau adopted § 1026.37(l)(1)(i) to require that a creditor disclose on the Loan Estimate the total payments over five years, rather than the life of the loan, using the label "In 5 Years." [88] Second, the Bureau adopted § 1026.38(o)(1) to require that a creditor disclose on the Closing Disclosure the total of payments to reflect the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.[89] Comment 38(o)(1)–1 explains that the total of payments is calculated in the same manner as the "In 5 Years" disclosure, except that the disclosed amount reflects the total payments through the end of the loan term.

The Bureau's inclusion of loan costs in the definition of the total of payments in the TILA–RESPA Final Rule was a modification of TILA's requirement under section 128(a)(5) to disclose the total of payments as the sum of the amount financed and the finance charge. Loan costs are those costs disclosed under § 1026.38(f) and include origination charges as well as the costs of services required by the creditor but provided by persons other than the creditor, including services that the borrower did and did not shop for.[90] These services commonly include fees for appraisal, credit reporting, survey, title search, and lender's title insurance. Under § 1026.4, these services may or may not be included in the finance charge, and whether they are included in the finance charge is a fact-specific determination.[91] As the Bureau explained in the 2012 TILA–RESPA Proposal and TILA–RESPA Final Rule, including mortgage insurance and other loan costs rather than the finance charge in the "In 5 Years" and the total of payments disclosures was intended to enhance consumer understanding of mortgage transactions and allow consumers to compare loans more easily and usefully.

Since the effective date of the rule, the Bureau has learned that there is uncertainty whether the total of payments, as modified by the Bureau, is subject to the tolerance for accuracy applicable to the disclosed finance charge and other disclosures affected by the disclosed finance charge under § 1026.38(o)(2). In modifying the total of payments calculation in the TILA–RESPA Final Rule, the Bureau did not intend to alter the tolerances for accuracy applicable to the total of payments. Therefore, the Bureau proposes to amend § 1026.38(o)(1) to explicitly establish that the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge apply to the total of payments for each transaction subject to § 1026.19(e) and (f).

The Bureau understands that clarity regarding the applicable tolerances for accuracy of the total of payments is especially important because of the statutory consequences of misdisclosure of the total of payments. The total of payments is one of the disclosures that may give rise to civil liability as set forth in TILA section 130 for a creditor's failure to comply, including actual damages, statutory damages (individual and class action), costs, and attorney's fees.[92] The total of payments is also one of the even more limited set of material disclosures where a misdisclosure can give rise to TILA's extended right of rescission for certain transactions as set forth in TILA section 125, which generally is available for three years after the date of consummation of the transaction, serves to void the creditor's security interest in the property, and eliminates the consumer's obligation to pay any finance charge (even if accrued) or any other costs incident to the loan.[93] Nothing in the TILA–RESPA Final Rule altered this defined statutory liability for the total of payments or any other disclosure.

The Bureau believes that its proposal to apply the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge to the total of payments for purposes of the Closing Disclosure is appropriate. The TILA–RESPA Final Rule adopted its own good faith analysis and requires a creditor to refund any excess paid by the consumer, when necessary, to promote accurate disclosure. Additionally, since Congress amended TILA in 1995, the tolerances for accuracy of the finance charge have been understood to apply to the total of payments. Congress was clear that, to the extent other disclosures with statutory liability were affected by a misdisclosure of the finance charge within the tolerance limits, the same protections should apply. At the time Congress adopted the finance charge tolerance rules, assuming that no errors or clerical mistakes were made in the total of payments calculation, the total of payments was by definition determined by the finance charge calculation. Congress did not alter the statutory tolerances in adopting the Dodd-Frank Act and in requiring the Bureau to integrate the TILA and RESPA disclosures. Therefore, to promote consistency with the tolerances in effect before the TILA–RESPA Final Rule, the Bureau proposes to apply the same tolerances for accuracy of the finance charge to the total of payments for purposes of the Closing Disclosure.

Specifically, the Bureau proposes to revise § 1026.38(o)(1) to provide that the disclosed total of payments shall be treated as accurate if the amount disclosed as the total of payments: (i) Is understated by no more than $100; or (ii) is greater than the amount required to be disclosed. The Bureau requests comment on these proposed revisions. The Bureau also proposes conforming revisions to § 1026.23(g) and (h)(2) as discussed in the section-by-section analysis of each of those sections. The Bureau also proposes new comment 38(o)–1 to provide two examples illustrating the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

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[85] 77 FR 51116, 51124 (Aug. 23, 2012), 78 FR 79730, 79976 (Dec. 31, 2013).

[86] 77 FR 51116, 51222 (Aug. 23, 2012), 78 FR 79730, 79976 (Dec. 31, 2013).

[87] The Bureau modified the requirement of TILA section 128(a)(5) pursuant to its authority under TILA section 105(a) (15 U.S.C. 1604(a)), Dodd-Frank Act 1032(a) (12 U.S.C. 5532(a)), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) (15 U.S.C. 1601 note). 78 FR 79730, 80038 (Dec. 31, 2013).

[88] 77 FR 51116, 51223 (Aug. 23, 2012), 78 FR 79730, 79977 (Dec. 31, 2013).

[89] 78 FR 79730, 80038 (Dec. 31, 2013).

[90] *See* 78 FR 79730, 80010 (Dec. 31, 2013).

[91] Finance charge is defined in TILA section 106(a) (15 U.S.C. 1605(a)). Section 1026.4 implements this definition, provides examples, and excludes certain charges from the finance charge.

[92] 15 U.S.C. 1640(a).

[93] 15 U.S.C. 1635. Section 1026.23 implements TILA's rescission provision and defines material disclosures to mean the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §§ 1026.32(c) and (d) and 1026.43(g). *See* § 1026.23(a)(3)(ii).

Further, the Bureau proposes to revise comment 38(o)(1)–1. Comment 38(o)(1)–1 explains that the total of payments is calculated in the same manner as the "In 5 Years" disclosure under § 1026.37(l)(1)(i), except that the disclosed amount reflects the total payments through the end of the loan term. The Bureau has learned that market participants have taken differing views regarding whether to reflect lender or seller credits in the total of payments on the Closing Disclosure. Therefore, the Bureau proposes to revise comment 38(o)(1)–1 to clarify that the total of payments calculation on the Closing Disclosure excludes charges for loan costs disclosed under § 1026.38(f) that are designated on the Closing Disclosure as paid by seller or paid by others.

A seller or other party, such as a lender, may agree to offset a particular loan cost, whether in whole or in part, through a specific credit, for example through a specific seller or lender credit. The proposed revision to the comment would clarify that, because these loan costs are not paid by the consumer, the amounts of such loan costs offset by specific credits are excluded from the total of payments calculation. The proposed revision to comment 38(o)(1)–1 references only loan costs offset by specific credits as being excluded from the total of payments calculation. Non-specific credits, however, are generalized payments to the consumer that do not pay for a particular fee and therefore, under the proposed revision to comment 38(o)(1)–1, would not offset loan costs for purposes of the total of payments calculation.

The Bureau believes that the distinct treatment of specific credits from a seller or other party between the "In 5 Years" disclosure and the total of payments disclosure is appropriate given the difference between the information available to the creditor when it provides the Loan Estimate and when it provides the Closing Disclosure. At the Loan Estimate stage, a creditor may not know whether a specific credit will be applied to offset a loan cost, whether in whole or in part. Further, unlike the Closing Disclosure form, the Loan Estimate form does not allow for the itemized disclosure of costs paid by the seller or others. The Bureau seeks comment on the proposed revision to comment 38(o)(1)–1.

Legal Authority

The Bureau proposes to revise § 1026.38(o)(1) and its commentary to apply the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge to the total of payments for each transaction subject to § 1026.19(e) and (f) pursuant to its authority to set tolerances for numerical disclosures under TILA section 121(d).[94] Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute. The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d). As noted above, the Bureau has concluded that the proposed tolerances for the total of payments would promote consistency with the tolerances in effect before the TILA–RESPA Final Rule. The Bureau therefore believes that the proposed tolerances facilitate compliance with the statute. Additionally, the Bureau believes that the tolerances in proposed § 1026.38(o)(1), which are identical to the finance charge tolerances provided by Congress in TILA section 106(f), are sufficiently narrow to prevent these tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of TILA.

38(t) Form of Disclosures

38(t)(3) Form

The Bureau proposes to make technical amendments to comment 38(t)(3)–1 to insert two missing words and make a non-substantive stylistic edit. Specifically, in the first sentence of the comment, the Bureau proposes to add the words "is not" and delete the prefix "non" that precedes the word "federally." This proposed technical amendment would not alter the substance of comment 38(t)(3)–1.

38(t)(4)(ii) Rounding

Section 1026.38(t)(4)(ii) provides rounding rules for the percentage amounts disclosed under § 1026.38(b), (f)(1), (n), (o)(4), and (o)(5). The Bureau required rounding, based on testing results, for certain amounts to reduce information overload, aid in consumer understanding of the transaction, prevent misconceptions regarding the accuracy of certain estimated amounts (*e.g.,* estimated property costs over the life of the loan), and ensure a meaningful disclosure of credit terms. Section 1026.38(t)(4)(ii) requires the percentage amounts disclosed for loan terms, origination charges, the adjustable interest rate table, and the TIP shall not be rounded and shall be disclosed up to two or three decimal places and the percentage amount required to be disclosed for the annual percentage rate shall not be rounded and shall be disclosed up to three decimal places. If the amount is a whole number, then the amount disclosed shall be truncated at the decimal point.

The Bureau understands that there is uncertainty about the rounding requirements under § 1026.38(t)(4)(ii). The Bureau is proposing to revise § 1026.38(t)(4)(ii) to simplify the rounding requirements required for the percentages disclosed pursuant to the requirements of § 1026.38(t)(4)(ii). As proposed, § 1026.38(t)(4)(ii) would require that the percentage amounts disclosed under § 1026.38(b), (f)(1), (n), (o)(4), and (o)(5) be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point.

38(t)(5) Exceptions

38(t)(5)(v) Separation of Consumer and Seller Information

Regulation Z requires the use of the Closing Disclosure by the creditor to provide the required disclosures concerning the transaction to the consumer and also requires the settlement agent to provide a copy of the Closing Disclosure to the seller under § 1026.19(f). Under § 1026.38(t)(5)(vi), the creditor or settlement agent is permitted to provide a separate Closing Disclosure to the seller that contains limited consumer information. The settlement agent must provide to the seller either a copy of the Closing Disclosure or a permissible separate Closing Disclosure, under § 1026.19(f)(4)(iv). Regulation Z does not contain any further explanation of parties to whom the Closing Disclosure may be provided, the extent to which the consumer's information may be provided to the seller or the seller's agent, or the extent to which the seller's information may be provided to the consumer or consumer's agent. The Bureau is proposing to add new commentary under § 1026.38(t)(5)(v) to clarify that, at its discretion, the creditor may make modifications to the Closing Disclosure form to accommodate the provision of separate Closing Disclosure forms to the consumer and seller.

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[94] 15 U.S.C. 1631(d).

The Bureau recognizes that consumer credit transactions secured by real property where the consumer is purchasing the property from a seller pose particular considerations related to the sharing of information. Creditors must collect and share information related to the seller's portion of the transaction to satisfy the requirements of government insurance programs, government-sponsored enterprises, and secondary market investors in the ordinary course of providing the financial service (the consumer credit transaction secured by real property).[95] Additionally, many parties to the transaction rely on sharing information to complete the transaction, including real estate agents, loan officers, and settlement agents, among others.

Prior to the effective date of the TILA–RESPA Rule, RESPA and Regulation X required the settlement agent to issue a HUD–1 form to borrowers, sellers, and their agents and provided that the borrower and seller can receive separate HUD–1 forms, with the terms of the buyer's transaction omitted from the seller's disclosure and vice versa. Revisions to RESPA in 1975 permitted separate disclosures to both borrowers and sellers.[96] Regulation X explicitly required the settlement agent to provide to the lender a copy of the HUD–1 with the borrower's and seller's information, or a copy of each separate disclosure that is provided to the buyer and seller, as applicable.

The Bureau has been asked repeatedly by creditors, settlement agents, and real estate agents about the sharing of the Closing Disclosure with third parties involved in the mortgage transaction. These inquiries have largely concerned which third parties may receive a copy of the Closing Disclosure but have also concerned whether a combined Closing Disclosure form must be provided to the consumer and seller or whether separate Closing Disclosure forms may be provided to the consumer and the seller. The Bureau provided guidance on this topic in its webinar on April 12, 2016.[97]

The Gramm-Leach-Bliley Act (GLBA) was passed by Congress after both RESPA and TILA were enacted. Financial institutions involved in the residential real estate settlement process, among others, must comply with the GLBA's requirements relating to the sharing of consumer information as well as with similar State law requirements, where applicable. The GLBA's privacy provisions are implemented by the Bureau's Regulation P, 12 CFR part 1016, and by analogous regulations issued by the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Federal Trade Commission. Regulation P generally provides that a financial institution (such as a creditor or settlement agent) may not disclose its customer's nonpublic personal information to a nonaffiliated third party without providing notice to the customer of such information sharing and an opportunity to opt-out of such sharing.

There are several exceptions to these notice and opt-out requirements, however. For example, GLBA section 502(e)(8) provides an exception that applies if a financial institution shares its customer's non-public personal information to comply with Federal, State, or local laws, rules and other applicable legal requirements. GLBA sections 502(e)(1) and 509(7)(A) provide another exception that applies if a financial institution's sharing of its customers' non-public personal information is required, or is a usual, appropriate, or acceptable method, to provide the customer or the customer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product.

The Closing Disclosure, whether provided as a combined form containing consumer and seller information or separate forms reflecting each side of the real estate transaction conveying the real property from the seller to the consumer, is a record of the transaction (among other things), both for the consumer and creditor, of the transactions between the consumer, seller, and creditor, as required by both TILA and RESPA. Such records may be informative to real estate agents and others representing both consumers and creditors as part of both the consumer credit and real estate portions of residential real estate sales transactions, as they provide the consumer or the consumer's agent with a record of the transaction. Based on its understanding of the real estate settlement process, the Bureau understands that it is usual, appropriate, and accepted for creditors and settlement agents to provide the combined or separate Closing Disclosure as a confirmation, statement, or other record of the transaction, to consumers, sellers, and their agents, or information on the status or value of the financial service or financial product to their customers or their customers' agents or brokers.

The Bureau recognizes that incorporating the guidance provided in the April 12, 2016 webinar on how to separate Closing Disclosure forms for the consumer and the seller into Regulation Z commentary may provide additional certainty to creditors. Accordingly, the Bureau is proposing to add comment 38(t)(5)(v)–1 to clarify that, at its discretion, the creditor may make modifications to the Closing Disclosure form to accommodate the provision of separate Closing Disclosure forms to the consumer and the seller and the three methods by which a creditor can separate such information. The Bureau further proposes to add comments 38(t)(5)(v)–2 and –3 to provide examples where the creditor may choose to provide separate Closing Disclosure forms to the consumer and seller.

38(t)(5)(vi) Modified Version of the Form for a Seller or Third-Party

The Bureau proposes to add comment 38(t)(5)(vi)–1 to cross-reference comment 38(t)(5)(v)–1 for additional clarity on permissible form modifications in relation to the modified version of the Closing Disclosure for sellers or third parties.

38(t)(5)(vii) Transactions Without a Seller and Simultaneous Loans for Subordinate Financing

Section 1026.38(t)(5)(vii) permits modifications to form H–25 of appendix H for a transaction that does not involve a seller and for which the alternative tables are disclosed pursuant to § 1026.38(d)(2) and (e). Comment 38(t)(5)(vii)–2 explains that, as required by § 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller must contain the label "Appraised Prop. Value" or "Estimated

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[95] For example, see FannieMae Single Family Selling Guide, March 29, 2016, pages 32–5, 435–41, 562–63, and 570–71 (available at *https://www.fanniemae.com/content/guide/selling/index.html*); FHA Handbook 4000.1, revised 03/14/2016 pages 115–17, 143–45, and 224–25 (*available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/handbook_4000-1*); VA Pamphlet 26–7, Revised, Chapter 8: Borrower Fees and Charges and the VA Funding Fee, pages 8–11 to 8–13 (*available at http://benefits.va.gov/warms/pam26_7.asp*).

[96] *See* Real Estate Settlement Procedures Act Amendments of 1975, Section 3(3), Public Law 94–205, 89 Stat. 1157 (1975).

[97] A recording of the webinar posted on a Web site by the Federal Reserve System (registration required) can be found on the Bureau's Web site at *http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/tila-respa-disclosure-rule/*.

Prop. Value'' where there is no appraisal. The Bureau is proposing to revise § 1026.38(t)(5)(vii), consistent with proposed revisions discussed in the section-by-section analysis of § 1026.38(d)(2) and (e), to include simultaneous loans for subordinate financing as transactions for which a modification of form H–25 of appendix H is permitted. The Bureau is also proposing a technical correction so that comment 38(t)(5)(vii)–2 correctly references § 1026.38(t)(5)(vii) instead of § 1026.38(t)(5)(viii) and additional minor clarifying edits. The Bureau is also proposing to add comment 38(t)(5)(vii)(B)–1 to clarify that amounts provided by third parties may be disclosed as credits in the payoffs and payments table, comment 38(t)(5)(vii)(B)–2 to clarify the disclosure of subordinate financing proceeds, and comment 38(t)(5)(vii)(B)–3 to cross-reference comment 37(h)(2)(iii)–1 for additional examples and comment 38–4 for the disclosure of a reduction in principal balance (principal curtailment) to provide a refund.

Proposed comment 38(t)(5)(vii)(B)–1 would clarify that amounts paid by third parties who provide funds on behalf of the consumer are considered funds provided by designees, and may be disclosed as credits in the payoffs and payments table using negative numbers. The proposed comment also would provide examples of such amounts. Proposed comment 38(t)(5)(vii)(B)–2 would clarify that, on the Closing Disclosure for a first-lien transaction that also has a simultaneous loan for subordinate financing, the proceeds of the subordinate financing are included in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) as a negative number. The disclosure of a negative amount for proceeds of the subordinate financing signifies additional cash being provided to the transaction on behalf of the borrower. Proposed comment 38(t)(5)(vii)(B)–3 would refer to other examples provided in comment 37(h)(2)(iii)–1. Proposed comment 38(t)(5)(vii)(B)–3 would also refer to proposed comment 38–4, which would provide options for the disclosure of a reduction in principal balance (principal curtailment) to provide a refund under § 1026.19(f)(2)(v), including disclosure under § 1026.38(t)(5)(vii)(B).

38(t)(5)(ix) Customary Recitals and Information

Comment 38(t)(5)(ix)–1 provides examples of information permitted to be disclosed on an additional page for the disclosure of customary recitals and information used locally in real estate settlements. The Bureau is proposing to revise comment 38(t)(5)(ix)–1 to cross-reference proposed comment 38–4, which would provide options for the disclosure of a reduction in principal balance (principal curtailment) to provide a refund under § 1026.19(f)(2)(v), including disclosure under § 1026.38(t)(5)(ix).

Appendix D—Multiple-Advance Construction Loans

Creditors have expressed difficulty with making disclosures under the TILA–RESPA Final Rule for construction financing because of certain inherent characteristics of construction financing that differ from most other transactions. Appendix D, which provides instructions concerning the disclosure of multiple-advance construction loans, has been part of Regulation Z since 1981.[98] Appendix D provides special procedures that creditors may use, at their option, to estimate and disclose the terms of multiple-advance construction loans when the amounts or timing of advances is unknown at consummation of the transaction. The appendix reflects § 1026.17(c)(6)(ii), which permits creditors to treat multiple-advance construction loans that may be permanently financed by the same creditor as one transaction or more than one transaction. The Bureau is proposing to revise comment app. D–7 to provide additional explanations for the disclosure of construction and construction-permanent loans under §§ 1026.37 and 1026.38 that the Bureau has provided informally. These additional explanations for construction-permanent loans would address the disclosures of the loan term, product, interest rate, initial periodic payment, increase in periodic payment, projected payments table, construction costs, and construction loan inspection and handling fees.

Comment app. D–7 was added by the TILA–RESPA Final Rule to clarify that some home construction loans that are secured by real property require disclosure of the projected payments tables pursuant to §§ 1026.37(c) and 1026.38(c) and not the general payment schedule required by § 1026.18(g). The comment provides two illustrations, in comments app. D–7.i and –7.ii, to clarify the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c) when the creditor elects to treat a multiple-advance construction loan that may be permanently financed by the same creditor as either one transaction or more than one transaction pursuant to § 1026.17(c)(6)(ii). The Bureau is proposing to amend comment app. D–7 to clarify how certain additional, specific disclosure requirements of §§ 1026.37 and 1026.38 apply in the unique context of construction and construction-permanent loans and to provide additional methods that creditors may use, at their option, to estimate and disclose those terms. In so doing, the Bureau proposes to preserve and further clarify the content of existing comments app. D–7.i and –7.ii, regarding the disclosure of the projected payments tables, in new comment app. D–7.vi. The proposed amendments to comment app. D–7 are further discussed below.

The Bureau proposes to exercise its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a) to amend appendix D to Regulation Z by revising the guidance provided concerning appendix D. The Bureau believes the adjustments described below effectuate the purposes of TILA under TILA section 102(a), because they would ensure meaningful disclosure of credit terms to consumers and facilitate compliance with the statute. In addition, consistent with section 1032(a) of the Dodd-Frank Act, these adjustments would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

Loan Term

Proposed comment app. D–7.i would clarify how a creditor may disclose the loan term, pursuant to §§ 1026.37(a)(8) and 1026.38(a)(5)(i), for a construction-permanent loan, taking into account the fact that such loans may be disclosed as one transaction or as more than one transaction. Under proposed comment app. D–7.i.A, if the creditor discloses the construction and permanent financing as a single transaction, the loan term disclosed would be the total combined term of the construction period and the permanent period. To illustrate this result, the proposed comment provides an example of how to disclose the loan term when a single set of disclosures is used for the combined construction-permanent loan. In the example, if the term of the construction period is 12 months and the term of the permanent period is 30 years, and both phases are disclosed as a single transaction, the loan term disclosed is 31 years. Proposed comment app. D–7.i.A also includes a cross-reference to comment 37(a)(8)–3, which explains that, in accordance with § 1026.17(c)(3) and its accompanying commentary, the effect of minor variations in the number of days counted for the months or years of a loan may be disregarded for purposes of the loan term disclosure.

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[98] *See* 46 FR 20847 (April 7, 1981).

Proposed comment app. D–7.i.B clarifies how to disclose the term of the permanent phase of a construction-permanent loan when the creditor elects to disclose the two phases as separate transactions. Because the permanent phase may be consummated and disclosed at the same time as the construction phase and may also be disclosed as a separate transaction with payments that do not begin until months after consummation, creditors have reported some uncertainty about when to begin counting the loan term of the permanent phase for disclosure purposes. Proposed comment app. D–7.i.B explains that, consistent with proposed comment 37(a)(8)–3, the loan term of the permanent financing is counted from the date that interest for the first scheduled periodic payment of the permanent financing begins to accrue, regardless of when the permanent phase is disclosed.

Product

Proposed comment app. D–7.ii would explain how to disclose the duration of the "Interest Only" feature of a construction loan or the construction phase of a construction-permanent loan under §§ 1026.37(a)(10)(ii)(B) and 1026.38(a)(5)(iii). The duration of the interest only period depends on whether the construction phase is disclosed separately, which would be covered by proposed comment app. D–7.ii.A, or as a combined transaction with the permanent phase, which would be covered by proposed comment app. D–7.ii.B.

Section 1026.37(a)(10) requires disclosure of the loan product, including the features that may change the periodic payment on the loan. Section 1026.37(a)(10)(iv) requires disclosure of the duration of the payment period of certain of the loan features, including the "Interest Only" feature under § 1026.37(a)(10)(ii)(B). Disclosure of an "Interest Only" feature is required if the loan does not have a negative amortization feature and one or more regular periodic payments may be applied only to interest accrued and not to the loan principal. The duration of the "Interest Only" payment period, therefore, counts the regular periodic payments that may be applied only to interest accrued and not to the loan principal.

In a construction loan disclosure or when a separate disclosure is provided for the construction phase of a construction-permanent loan, the final payment will typically be a balloon payment that is the sum of the final interest payment and the loan principal. As a payment that includes principal, the final balloon payment is not counted for purposes of determining the duration of the "Interest Only" payment period. This means, for example, that the product disclosure for a fixed rate construction loan with a term of one year is "11 mo. Interest Only, Fixed Rate." Proposed comment app. D–7.ii.A would provide this explanation and example.

Proposed comment app. D–7.ii.B would explain that, if a single, combined construction-permanent disclosure is provided, the time period of the interest only feature that is disclosed as part of the product disclosure under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is the full term of the interest only construction financing. In such cases, the construction and permanent phases are considered together as a single loan or transaction, and there is no balloon payment of principal and interest at the end of the construction phase. Proposed comment app. D–7.ii.B would provide an example explaining that a creditor discloses the "Product" for a fixed rate, construction-permanent loan with an interest only construction phase of 12 months as "1 Year Interest Only, Fixed Rate."

Interest Rate

Proposed comment app. D–7.iii would explain the disclosure of the interest rate in a construction-permanent loan pursuant to §§ 1026.37(b)(2) and 1026.38(b). The comment addresses a unique aspect of construction-permanent loans: If the permanent phase is disclosed at the same time as the construction phase, either in a combined disclosure with the construction phase or in a separate disclosure of only the permanent phase, the interest rate of the permanent financing may not be known because the conversion to permanent financing may not take place for several months. If the permanent financing has an adjustable rate and separate disclosures are provided, the proposed comment would state that the rate disclosed for the permanent financing is the fully-indexed rate pursuant to § 1026.37(b)(2) and its commentary. If the permanent financing has a fixed rate, proposed comment app. D–7.iii would clarify that the rate disclosed is based on the best information reasonably available at the time the disclosures are made and would include a cross-reference to comments 19(e)(1)(i)–1 and 19(f)(1)(i)–2, which provide explanation of the best information reasonably available standard. The proposed comment would also provide instruction on post-consummation disclosures that may be required if the creditor may modify the rate disclosed for the permanent financing when the construction financing converts to permanent financing. If such a modification of the interest rate occurs at the time of conversion and results in a payment change, the creditor must provide the rate and adjustment disclosures required by § 1026.20(c) at least 60 days, and no more than 120 days, before the first payment at the adjusted level is due, without regard to whether the permanent financing has a fixed, adjustable, or step rate. The Bureau seeks comment on the appropriateness of the provision of the § 1026.20(c) disclosures in connection with the conversion to permanent financing and any operational changes for creditors in a construction-permanent loan context to provide the rate and adjustment disclosure required by § 1026.20(c) at least 60 days, and no more than 120 days, before the first payment at the adjusted level is due.

Initial Periodic Payment

Proposed comment appendix D–7.iv would clarify that the general rule of § 1026.17(c)(3), which allows creditors to disregard the effects of certain minor variations in making calculations and disclosures, applies to the appendix D calculation of the initial periodic payment amount disclosed under §§ 1026.37(b)(3) and 1026.38(b). For example, the effect of the fact that months have different numbers of days may be disregarded in making the disclosure.

Increase in Periodic Payment

Section 1026.37(b)(6) requires a creditor to provide an affirmative or negative answer to the question, "Can this amount increase after closing?" with respect to certain amounts, including the initial periodic payment amount disclosed under § 1026.37(b)(3). Creditors have asked the Bureau what answer may be provided to this question in the case of construction financing if the actual schedule of advances is not known. Proposed comment app. D–7.v explains that, in general, the answer a creditor provides will depend upon whether the construction financing has a fixed rate or an adjustable rate. Proposed comment app. D–7.v.A and B discusses the disclosure of fixed-rate construction financing, and proposed comment app. D–7.v.C discusses the disclosure of adjustable-rate construction financing.

The payments made during the construction phase are often interest-only payments. The amount of any particular interest-only payment on a construction loan is typically determined by applying the contract interest rate to the amounts advanced. The amounts advanced may be tied to construction milestones and the total of the amounts advanced will increase with each milestone, usually resulting in increases in the amounts of the interest-only payments that become due. If the construction financing has a fixed rate, the periodic interest-only payments will increase over the term of the loan, reflecting increases in the amounts advanced. If the construction financing has an adjustable rate, the periodic interest-only payments may also increase over time, but the increase may be due to both an increase in the adjustable interest rate and increases in the amounts advanced.

A creditor may use the methods in appendix D to estimate interest and make disclosures for construction loans if the actual schedule of advances is not known. The calculation of the periodic payments in a fixed-rate construction loan using appendix D produces interest-only periodic payments that are equal in amount. Although the actual interest-only payments will increase over the term of the construction financing as the amounts advanced increase, because the methods provided by appendix D to estimate interest may be used to make disclosures, a technically correct and compliant answer to "Can this amount increase after closing?" is "NO." The periodic payments for fixed rate construction financing, as calculated under appendix D, do not increase but are equal.

Creditors nonetheless have expressed concern over providing an answer of "NO" to the question, "Can this amount increase after closing?" This technically correct disclosure may not reflect the actual increase in payments that will occur over the term of the construction financing, even though the amount of such increases is not known at or before consummation. The Bureau is therefore proposing comment app. D–7.v.A to explain that a creditor may disclose the initial periodic payment using appendix D and nevertheless may answer "YES" to the question, "Can this amount increase after closing?" Comment app. D–7.v.A would also explain that a technically correct answer to "Can this amount increase after closing" is "NO."

Proposed comment app. D–7.v.B would explain that, if separate disclosures are provided for fixed-rate construction financing and appendix D is used to compute the periodic payment, the disclosures under § 1026.37(b)(6)(iii) and the disclosure of a range of payments under § 1026.37(c)(2)(i) may be omitted. As discussed above, the periodic payments calculated under appendix D for a fixed rate loan are equal. Consequently, a creditor in that case does not provide the increase in periodic payments disclosures under § 1026.37(b)(6)(iii), such as the due date of the first adjusted principal and interest payment or a reference to the adjustable payments table required by § 1026.37(i). Such a creditor also does not disclose the principal and interest payment under § 1026.37(c)(2)(i) as a range of payments in the projected payments table, even though the interest-only payments would increase over the term of the construction financing, reflecting increases in the total amount advanced.

As a practical matter, there is no method for calculating the § 1026.37(b)(6)(iii) and (c)(2)(i) disclosures as they relate to changes in the total amount advanced in construction financing when the amounts or timing of advances is unknown at or before consummation. Any method devised to take into account increases in the total amount advanced would introduce significant complexity and would have to differ from the method used for calculating the initial periodic payment under appendix D, which assumes a single amount outstanding for the entire construction period. The Bureau does not believe that increasing the complexity of compliance would serve the purpose of this proposal, which is to provide instructions and clarity for the existing disclosure requirements.

Proposed comment app. D–7.v.C would clarify that, if separate disclosures are provided for adjustable-rate construction financing and appendix D is used to calculate the periodic payment, the disclosures reflect the changes that are due to changes in the interest rate but not the changes that are due to changes in the amounts advanced and provides an illustrative example. While a creditor extending fixed-rate construction financing may answer either "YES" or "NO" as the answer to the question, "Can this amount increase after closing?," because payments may increase based on increases in advances, proposed comment app. D–7.v.C. states that a creditor extending adjustable-rate construction financing would disclose "YES" as the answer to the question, "Can this amount increase after closing?" When a creditor extends adjustable rate construction financing, unlike when it extends fixed rate construction financing, payments may increase based on an increase in the adjustable interest rate as well as an increase in the amount advanced. Because the payments may increase in such cases, without regard to the amount of advances, a creditor would disclose "YES" as the answer to the question, "Can this amount increase after closing?" and "NO" would not be a technically correct answer.

Proposed comment app. D–7.v.C. would also clarify that, for adjustable-rate construction financing, a creditor must provide disclosures reflecting, changes that are due to changes in the interest rate, but may omit disclosures reflecting changes that are due to changes in the total amount advanced. Proposed comment app. D–7.v.C. would explain that the creditor may omit the adjustable payment table disclosure required by § 1026.37(i) because the disclosure would reflect a change due to a change in the total amount advanced. Consistent with these disclosures, the creditor also discloses a range of payments in the principal and interest row of the projected payments table under § 1026.37(c)(2)(i).

Projected Payments Table

Comment app. D–7 currently addresses only the disclosure of a projected payments table under §§ 1026.37(c) and 1026.38(c). Comment app. D–7.i provides an illustration of the construction phase projected payments table disclosure if the creditor elects to disclose the construction and permanent phases as separate transactions. Comment app. D–7.ii provides an illustration of the projected payments table disclosure if the creditor elects to disclose the construction and permanent phases as a single transaction. Current comment app. D–7.i would be restated in proposed new comment app. D–7.vi.A. Clarifying language would be added to specify that the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part I.A.1 if interest is payable only on the amount actually advanced for the time it is outstanding. Language consistent with informal guidance provided by the Bureau would also be added to clarify that the existing language "the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§ 1026.37(a)(10)(ii)(D) and

1026.38(a)(5)(iii)" applies, unless the transaction has negative amortization, interest only, or step payment features, consistent with § 1026.37(a)(10)(iii). To provide more complete explanations concerning balloon payments, references to the balloon payment disclosures under §§ 1026.37(b)(5), 1026.37(b)(7)(ii), and 1026.38(b) would be added to the existing statement that the creditor must disclose the balloon payment in the projected payments table.

Current comment app. D–7.ii would be restated in proposed new comment app. D–7.vi.B. Language consistent with informal guidance provided by the Bureau would be added to clarify existing language stating that "the projected payments table must reflect the interest-only payments during the construction phase in a first column." As proposed, the comment would explain that the first column also reflects the amortizing payments for the permanent phase if the term of the construction phase is not a full year. This clarification would ensure consistency with § 1026.37(c)(1)(iii)(B), which requires disclosure of a range of payments if the periodic principal and interest payment or range of payments may change during the same year as the initial periodic payment or range of payments. A clarifying revision would also be added to proposed comment app. D–7.vi.B, noting that the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part II.A.1, if interest is payable only on the amount actually advanced for the time it is outstanding.

Construction Costs as "Other" Costs

Proposed comment app. D–7.vii.A would explain the amount of construction costs is disclosed under the subheading "Other" under § 1026.37(g)(4), consistent with informal guidance provided by the Bureau and the proposed changes to § 1026.37(g)(4). Section 1026.37(g)(4) requires disclosure of any other amounts in connection with the transaction that the consumer is likely to pay or has contracted with a person other than the creditor or loan originator to pay at closing and of which the creditor is aware at the time of issuing the Loan Estimate. Construction costs are costs that the consumer contracts, at or before closing, to pay in whole or in part with loan proceeds under § 1026.37(g)(4). Because the creditor is making the loan, in whole or in part, to cover construction costs and is therefore aware of such costs at the time of issuing the Loan Estimate, the requirements for disclosure under § 1026.37(g)(4) are met.

This proposed comment is consistent with proposed amendments to comment 37(g)(4)–4, which would provide that, in situations where the cost of improvements on the property is financed by a builder that is also the creditor, such costs are disclosed under § 1026.37(g)(4). The amount of construction costs is therefore disclosed under the subheading "Other" pursuant to § 1026.37(g)(4).

Proposed comment app. D–7.vii.B would clarify disclosure of a portion of a construction loan's proceeds that is placed in a reserve or other account at consummation. Such amounts are sometimes referred to as a "construction holdback." Consistent with informal guidance provided by the Bureau, the proposed comment would explain that the amount of such an account may be disclosed separately from other construction costs or may be included in the amount disclosed for construction costs for purposes of required disclosures and calculations under §§ 1026.37 and 1026.38, at the creditor's option. If the creditor chooses to disclose the amount of loan proceeds placed in a reserve or other account at consummation separately, the creditor may disclose the amount as a separate itemized cost, along with a separate itemized cost for the balance of the construction costs, in accordance with § 1026.37(g)(4). The amount may be labeled with any accurate term, so long as any label the creditor uses is in accordance with the clear and conspicuous standard explained at comment 37(f)(5)–1. If the amount is disclosed separately, the balance of construction costs must exclude the designated amount to avoid double counting.

Construction Loan Inspection and Handling Fees

Proposed comment app. D–7.viii would provide instructions for the disclosure of construction loan inspection and handling fees consistent with informal guidance provided by the Bureau. The proposed comment explains that comment 4(a)–1.ii.A identifies inspection and handling fees for the staged disbursement of construction loan proceeds as finance charges. The proposed comment would also provide cross-references to proposed comments 37(f)–3, 37(f)(6)–3, and 38(f)–2, which are discussed in the section-by-section analysis above. The Bureau believes that, by directing readers of the appendix D commentary to these other comments, proposed comment app. D–7.viii would facilitate compliance.

Appendix H—Closed-End Forms and Clauses

Appendix H to Regulation Z includes blank forms illustrating the master headings, headings, subheadings, etc., that are required by §§ 1026.37 and 1026.38, *i.e.,* forms H–24(A) and (G), H–25(A) and (H) through (J), and H–28(A), (F), (I), and (J) (together, the integrated disclosure model forms). The titles of those blank forms each include the designation "Model Form." Appendix H to Regulation Z also includes non-blank forms providing samples of disclosures, *i.e.,* forms H–24(B) through (F), H–25(B) through (G), and H–28(B) through (E), (G), and (H) (together, the integrated disclosure samples). The titles of those non-blank forms each include the designation "Sample".

Pursuant to TILA section 105(b), a creditor is deemed to be in compliance with TILA's disclosure provisions with respect to other than numerical disclosures if the creditor uses any appropriate model form or clause as published by the Bureau.[99] Accordingly, use of an appropriate integrated disclosure model form, if properly completed with accurate content, constitutes compliance with the requirements of § 1026.37 or § 1026.38, as applicable. Moreover, under §§ 1026.37(o)(3) and 1026.38(t)(3), use of an appropriate integrated disclosure model form is mandatory for a transaction that is a federally related mortgage loan (as defined in Regulation X). That information is also noted in Regulation Z comment app. H–30. However, in comment app. H–30, the Bureau did not distinguish between the integrated disclosure model forms and the integrated disclosure samples and, instead, refers to all forms H–24(A) through (G), H–25(A) through (J), and H–28(A) through (J) as "model forms."

The Bureau understands that, because of the overbroad reference to "model forms" in comment app. H–30, uncertainty exists whether creditors may rely on the integrated disclosure samples to demonstrate compliance with the requirements of § 1026.37 or § 1026.38, as applicable. Unlike the integrated disclosure model forms, whose respective titles include the designation "Model Form," the integrated disclosure samples are not model forms providing safe harbor protection. Rather, the integrated disclosure samples are illustrations of particular disclosures; these samples are not a substitute for the text of §§ 1026.37 and 1026.38 and the commentary to those sections.

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[99] 15 U.S.C. 1604(b). A creditor may delete any information which is not required by TILA or rearrange the format, if in making such deletion or rearranging the format, the creditor does not affect the substance, clarity, or meaningful sequence of the disclosure. *Id.*

The Bureau is proposing to revise comment app. H–30 to distinguish between the integrated disclosure model forms and the integrated disclosure samples. Thus, proposed comment app. H–30 would state that the integrated disclosure model forms, specifically forms H–24(A) and (G), H–25(A) and (H) through (J), and H–28(A), (F), (I), and (J), are model forms for the disclosures required under §§ 1026.37 and 1026.38. Moreover, proposed comment app. H–30 would state that, under §§ 1026.37(o)(3) and 1026.38(t)(3), for federally related mortgage loans forms H–24(A) (or, alternatively, H–24(G)) and H–25(A) (or, alternatively, H–25(H), (I) or (J)) are standard forms required to be used for the disclosures required under §§ 1026.37 and 1026.38, respectively.

The Bureau also has received inquiries as to whether there are inaccurate calculations or other errors in the integrated disclosure samples as published and whether, if so, such inaccurate content has any legal consequence or effect. As noted above, even if such errors exist, the integrated disclosure samples, unlike the integrated disclosure model forms, are not controlling authority for any purpose. Accordingly, they should not be read as changing or overriding the requirements of §§ 1026.37 and 1026.38, which are the controlling authorities regarding the disclosures' content. Sample forms are provided by the Bureau purely for illustration and as an aid to compliance. Because any errors in the integrated disclosure samples have such limited legal consequences, the Bureau has not conducted a systematic review of their accuracy; should the Bureau undertake such a review in the future and identify errors, it will adopt appropriate revisions.

VI. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

In developing the proposed rule, the Bureau has considered the potential benefits, costs, and impacts.[100] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. The Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

This proposal would make four substantive changes to the TILA–RESPA Final Rule, along with other clarifications, minor changes, and technical corrections: tolerances for the total of payments, adjustment of the partial exemption under § 1026.3(h); coverage of loans secured by cooperative units, whether or not treated as real property under State law; rules concerning the information sharing between the parties involved in a mortgage transaction. This section discusses the first three of those substantive changes. The fourth change is discussed elsewhere in the preamble. The potential benefits and costs of the provisions contained in the proposed rule are evaluated relative to the baseline where the current provisions of the TILA–RESPA Rule remain in place.

The first of these three substantive changes would provide tolerances for the total of payments that parallel the existing tolerances for the finance charge. Prior to the TILA–RESPA Final Rule, the calculation of the total of payments was based directly on the finance charge. As a result, the disclosure of the total of payments was generally subject to the statutory tolerance for the finance charges and disclosures affected by the finance charge. Because the calculation of the total of payments, as revised in the TILA–RESPA Final Rule, is now no longer based directly on the calculation of the finance charge, ambiguity exists as to the applicability of the statutory tolerance for the finance charge to the total of payments. The Bureau would resolve this ambiguity by expressly applying a parallel tolerance to the total of payments.

The second change would adjust the partial exemption under § 1026.3(h) from the integrated disclosures, which, as cross-referenced at § 1024.5(d)(2), also provides an exemption from the RESPA disclosures. If a creditor is not required to provide the integrated disclosures and is not eligible for the partial exemption under § 1026.3(h), the creditor must provide the pre-existing RESPA disclosures. The partial exemption often applies to low-cost down payment or other types of housing assistance loans originated by housing finance agencies (HFAs) or by creditors that partner with HFAs and originate loans in accord with HFA guidelines. The partial exemption was designed to facilitate such low cost lending by HFA's and their partners in the recognition that such loans provide consumers with significant benefits.

The Bureau has heard from HFAs and others that, in some jurisdictions, the applicability of the partial exemption has been limited. In order to satisfy the partial exemption, the total costs on the loan, payable by the consumer at consummation, including transfer taxes and recording fees, cannot exceed 1 percent of the total amount of credit extended. Many HFAs have told the Bureau that, due to the increase in both transfer taxes and recording fees in recent years and the small size of many of these loans, often less than $5,000, these loans often have upfront costs exceeding the 1 percent threshold. Consequently, these loans do not meet criteria for the partial exemption in § 1026.3(h)(5), and creditors must provide consumers with the RESPA disclosures, unless the creditor is otherwise obligated to provide the integrated disclosures.

The divisions of creditors who work most closely with HFAs may not have experience with the other loan products, such as reverse mortgages, that also still require the provision of the RESPA disclosures. Software systems used by HFAs also may no longer support the RESPA disclosures, making it necessary to complete the RESPA disclosures manually. Manual completion of the disclosures, while compliant, may be costly and error-prone. As a result of these operational complexities, some creditors may be less willing to work with HFAs and other organizations to continue providing these housing assistance loans. As adjusted, the exemption would make explicit that transfer taxes are among the permissible costs for these loans and provide that neither transfer taxes nor recording fees count towards the 1 percent threshold, thus expanding the scope of the partial exemption for the low-cost and deferred or contingent repayment lending described by § 1026.3(h).

The third change is to include loans secured by cooperative units in the TILA–RESPA Rule's coverage, whether or not cooperative units are treated as real property under applicable State law. As discussed in the section-by-section analysis of § 1026.19, State law varies, sometimes even within the same State, as to whether cooperative units are treated as real property. The proposed change would create uniform application, with the integrated disclosures issued for all covered transactions secured by cooperative units.

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[100] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

The proposed rule also includes a variety of minor changes and technical corrections. Among these changes is a proposed requirement to provide the post-consummation escrow cancellation and partial payment disclosures regardless of application date. This proposed change is discussed further below.

The Bureau seeks comment on data that would help to quantify costs and benefits and any associated burden with the proposed changes. Specifically, the Bureau is seeking information on the incidence of errors in the total of payments calculation on the Closing Disclosure and on the magnitude of such errors. Further, the Bureau is seeking input on the nationwide volume of loans that satisfy all conditions of § 1026.3(h) but whose upfront costs exceed 1 percent of the loan amount. The Bureau is also seeking information on current practices by servicers and other covered persons regarding the issuance of post-consummation disclosures (escrow cancellation disclosure, partial payment disclosure). The Bureau is further seeking data on the number of transactions secured by cooperative units where applicable State law does not unambiguously treat cooperative units as real property.

The Bureau is requesting any other data that would assist in quantifying the costs and benefits of this proposal.

B. Potential Benefits and Costs to Consumers and Covered Persons

Tolerance for Total of Payments

Under the proposed rule, the same tolerances would apply to the total of payments as apply, by statute, to the finance charge. The Bureau is concerned that, absent the explicit application of the finance charge tolerances to the total of payments, even a minor error in the calculation of the total of payments could potentially result in claims under TILA.

The Bureau believes that the proposed change, if adopted, would benefit creditors, in the limited circumstances where a small, within tolerance, error in total of payments calculation occurs. Creditors and their assignees would be less likely to face litigation, and its accompanying costs and risks, over minor errors. The Bureau also believes that the provision of an explicit tolerance for the total of payments may ease liquidity constraints in the secondary market. There is evidence that, in the current marketplace, investors are concerned with litigation risks associated with loans that are affected by even minor disclosure-related errors. The proposal could benefit creditors by alleviating investor concern regarding risks associated with small errors in the total of payments calculation.

Two factors could reduce the magnitude of these benefits. First, the Bureau has no information to indicate that there have yet been any claims based on a misdisclosure of the total of payments that would be covered by the proposed tolerance, nor is the Bureau aware of evidence to date to suggest that, specifically, errors in the total of payments have created difficulties for creditors in selling these loans. Investors, consequently, may not have specific concerns about errors in the total of payments. If investor concerns are minimal now, alleviating them further many not provide much benefit to creditors. Second, the relative benefits of the proposed change to creditors also would be reduced to the extent that affected creditors would be able to pass some of these costs on to consumers, in the form of higher prices, in the event the proposed change is not adopted.

The Bureau does not believe that creditors would bear any associated costs from the proposed change.

To the extent creditors would increase the price of credit in the absence of the adoption of explicit tolerance for the total of payments, consumers could benefit from the adoption of the tolerances through a reduced cost of credit. To date, the Bureau has no evidence that creditors have increased the cost of credit; therefore, the benefits to consumers from the proposed provision are discounted by the possibility that such issues may not materialize in the future even absent the change the Bureau is proposing.

The proposed rule may potentially create costs to consumers stemming from less precise disclosures of the total of payments. However, such costs would arise only in a narrow set of circumstances where: a) the error is small; b) the creditor would have avoided such error in the absence of tolerances, and, importantly, c) the error creates costs to the consumer. The Bureau is unable to quantify the incidence and the magnitude of such costs, and is seeking comment on the issue.

Excluding Recording Fees and Transfer Taxes From § 1026.3(h) Exemption Requirements

Under the proposed rule, State and local recording fees and transfer taxes would be excluded from the calculation of the 1 percent threshold (as specified in § 1026.3(h)(5)). As a result, the § 1026.3(h) partial exemption would be available for some loans that currently do not satisfy § 1026.3(h)(5) but satisfy the other provisions of § 1026.3(h). Creditors issuing loans would be exempted from providing the RESPA disclosures and would only have to provide a TILA disclosure (as per § 1026.18).

This provision, if adopted, would benefit creditors by allowing them to provide the more streamlined disclosures under § 1026.18 in connection with loans that satisfy the partial exemption at § 1026.3(h). The Bureau does not believe that creditors would bear any associated costs from the proposed provision.

This provision could benefit consumers by making down payment assistance loans and other non-interest bearing housing assistance loans potentially more accessible. While the Bureau notes that the § 1026.18 disclosures do not require the provision of the full level of detailed disclosures required either by RESPA or under the TILA–RESPA integrated disclosures, the loans eligible for the partial exemption under § 1026.3(h) generally have a simpler cost structure that the Bureau believes is adequately communicated by the § 1026.18 TILA disclosures.

Including Cooperatives in the Coverage of the TILA–RESPA Final Rule

Under the proposed change, consumer credit transactions secured by a cooperative unit would be covered by the TILA–RESPA Rule, whether or not applicable State law treats cooperative units as real property. The proposed change would benefit creditors who originate mortgages on cooperative units by eliminating any uncertainty regarding the applicable disclosures. Creditors who currently issue RESPA disclosures for loans secured by cooperative units would have to switch to the integrated disclosure on such loans. The Bureau believes the cost of such change to be minimal: the systems that generate the integrated disclosures must already be in place for other types of property.

The proposed change would benefit consumers who borrow against cooperative units in States where such units are treated as personal property under applicable State law. Such consumers would receive an integrated disclosure which, the Bureau believes, is better designed to communicate cost information than is the legacy RESPA disclosure.

Minor Changes and Technical Corrections

The Bureau believes that the proposed minor changes and technical corrections would generally benefit creditors by helping them to comply with the law in a more cost-effective way. One provision with a potential cost for creditors is the proposed change to the post-consummation disclosures.

Under the proposed change, the escrow cancellation notice required by § 1026.20(e) and the partial payment disclosure required by § 1026.39(d)(5) would be provided for all loans, not only those with an application date on or after October 3, 2015. Servicers and other covered persons that currently do not provide such disclosures for loans with an application before October 3, 2015, may incur additional costs, if the provision is adopted. The Bureau does not believe these costs to be significant because the systems that generate such disclosures must already be in place, in order to provide disclosures for loans with application dates on or after October 3, 2015. The additional cost would only consist of printing and mailing such disclosures and of a programming change to software to remove any tracking by application date. Moreover, the Bureau believes that most servicers and other covered persons have already adopted a uniform approach to post-consummation disclosures, as it is both compliant with the existing regulations and is cost-saving: Under the uniform approach, covered persons have no need to verify the application date when providing escrow cancellation notices under § 1026.20(e), nor do they need to maintain two separate mortgage transfer disclosures to comply with § 1026.39(d)(5).

Consumers would benefit from the proposed change by receiving timely and accurate disclosures.

C. Impact on Covered Persons With No More Than $10 Billion in Assets

The Bureau believes that covered persons with no more than $10 billion in assets will not be differentially affected by the proposed provisions. A possible exception are creditors that provide loans that satisfy criteria in § 1026.3(h): To the extent that the majority of such creditors have $10 billion or less in assets, the proposed exemption of recording fees and transfer taxes from the § 1026.3(h) requirements would create a disproportional benefit for covered persons in that asset category.

D. Impact on Access to Credit

As pointed out above, the proposed exemption of recording taxes and fees from the § 1026.3(h) requirements has a potential of improving access to housing assistance loans for consumers. In addition, a reduction in ambiguity regarding compliance with the law generally may improve access to credit for all consumers. The Bureau does not believe that any of the proposed changes are likely to have an adverse impact on access to credit.

E. Impact on Rural Areas

The Bureau believes that none of the proposed changes is likely to have an adverse impact on consumers in rural areas. To the extent that cooperative units are mostly located in urban areas, consumers in rural areas may receive little or no benefit from the proposed change regarding loans secured by cooperative units.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (the RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small nonprofit organizations. The RFA defines a "small business" as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.

As discussed above, the Bureau believes that none of the proposed changes would create a significant impact on covered persons, including small entities. Therefore, an IRFA is not required for this proposal.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB. The collections of information related to Regulations Z and X have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3170–0015 (Regulation Z) and 3170–0016 (Regulation X).

As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on new or revised information collection requirements in accordance with the PRA (See 44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, information collection requirements are clearly understood, and the Bureau can properly assess the impact of collection requirements on respondents.

The Bureau has determined that this proposed rule will not impose any significant change in the paperwork burden on covered persons. There will be a modest increase in PRA burden on servicers in connection with the requirement to provide post-consummation disclosures for loans with application dates prior to October 3, 2015. The Bureau currently does not have data to quantify this cost and is seeking input on this issue. Furthermore, the proposed inclusion of cooperative units in the coverage of the TILA–RESPA Rule would mean that for some transactions some creditors would now produce the integrated disclosure in lieu of the RESPA disclosure. This change represents a replacement of one information collection with another and is unlikely to result in a substantial increase in PRA burden.

A complete description of the information collection requirements, including the burden estimate methods, is provided in the information collection request (ICR) that the Bureau has submitted to OMB under the requirements of the PRA. Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the

Bureau of Consumer Financial Protection. Send these comments by email to *oira_submission@omb.eop.gov* or by fax to (202) 395–6974. If you wish to share your comments with the Bureau, please send a copy of these comments to the docket for this proposed rule at *www.regulations.gov*. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at *www.regulations.gov*, as well as OMB's public-facing docket at *www.reginfo.gov*.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

If applicable, the final rule will inform the public of OMB's approval of the revised information collection requirements proposed herein and adopted in the final rule. If OMB has not approved the revised information collection requirements prior to publication of the final rule in the **Federal Register**, the Bureau will publish a separate notice in the **Federal Register** announcing OMB's approval prior to the effective date of the final rule.

List of Subjects in 12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart A—General

■ 2. Section 1026.1 is amended by revising paragraph (d)(5) to read as follows:

§ 1026.1 Authority, purpose, coverage, organization, enforcement, and liability.

* * * * *

(d) * * *

(5) Subpart E contains special rules for mortgage transactions. Section 1026.32 requires certain disclosures and provides limitations for closed-end credit transactions and open-end credit plans that have rates or fees above specified amounts or certain prepayment penalties. Section 1026.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 1026.34 prohibits specific acts and practices in connection with high-cost mortgages, as defined in § 1026.32(a). Section 1026.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 1026.35(a). Section 1026.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling. Sections 1026.37 and 1026.38 set forth special disclosure requirements for certain closed-end transactions secured by real property or a cooperative unit, as required by § 1026.19(e) and (f).

* * * * *

■ 3. Section 1026.3 is amended by revising paragraphs (h)(5) and (h)(6) to read as follows:

§ 1026.3 Exempt transactions.

* * * * *

(h) * * *

(5)(i) The costs payable by the consumer in connection with the transaction at consummation are limited to:

(A) Recording fees;

(B) Transfer taxes;

(C) A bona fide and reasonable application fee; and

(D) A bona fide and reasonable fee for housing counseling services; and

(ii) The total of costs payable by the consumer under paragraph (h)(5)(i)(C) and (D) of this section is less than 1 percent of the amount of credit extended; and

(6) The creditor complies with all other applicable requirements of this part in connection with the transaction, including without limitation providing the disclosures required by § 1026.18.

Subpart C—Closed-End Credit

■ 4. Section 1026.19 is amended by revising paragraph (e) heading, paragraph (e)(1)(i), paragraphs (e)(3)(iii), (e)(3)(iv)(E) and (e)(3)(iv)(F), paragraph (f) heading, paragraphs (f)(1)(i), (f)(4)(i), and paragraph (g)(1) to read as follows:

§ 1026.19 Certain mortgage and variable-rate transactions.

* * * * *

(e) *Mortgage loans—early disclosures*—(1) *Provision of disclosures*—(i) *Creditor.* In a closed-end consumer credit transaction secured by real property or a cooperative unit, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with good faith estimates of the disclosures in § 1026.37.

* * * * *

(3) * * *

(iii) *Variations permitted for certain charges.* An estimate of any of the charges specified in this paragraph (e)(3)(iii) is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed under paragraph (e)(1)(i) of this section. For purposes of paragraph (e)(1)(i) of this section, good faith is determined under this paragraph (e)(3)(iii) even if such charges are paid to affiliates of the creditor, so long as the charges are bona fide:

(A) Prepaid interest;

(B) Property insurance premiums;

(C) Amounts placed into an escrow, impound, reserve, or similar account;

(D) Charges paid to third-party service providers selected by the consumer consistent with paragraph (e)(1)(vi)(A) of this section that are not on the list provided under paragraph (e)(1)(vi)(C) of this section; and

(E) Property taxes and other charges paid for third-party services not required by the creditor.

(iv) * * *

(E) *Expiration.* The consumer indicates an intent to proceed with the transaction more than 10 business days, or more than any additional number of days specified by the creditor before the offer expires, after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section.

(F) *Delayed settlement date on a construction loan.* In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section, the creditor may provide revised disclosures to the consumer if the original disclosures required under paragraph (e)(1)(i) of this section state clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in paragraph (e)(3)(iv) of this section.

* * * * *

(f) *Mortgage loans—final disclosures*—(1) *Provision of disclosures*—(i) *Scope.* In a transaction subject to paragraph (e)(1)(i) of this section, the creditor shall provide the consumer with the disclosures required under § 1026.38 reflecting the actual terms of the transaction.

* * * * *

(4) *Transactions involving a seller*—(i) *Provision to seller.* In a transaction subject to paragraph (e)(1)(i) of this section, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction.

* * * * *

(g) *Special information booklet at time of application*—(1) *Creditor to provide special information booklet.* Except as provided in paragraphs (g)(1)(ii) and (iii) of this section, the creditor shall provide a copy of the special information booklet (required pursuant to section 5 of the Real Estate Settlement Procedures Act (12 U.S.C. 2604) to help consumers applying for federally related mortgage loans understand the nature and cost of real estate settlement services) to a consumer who applies for a transaction subject to paragraph (e)(1)(i) of this section.

(i) The creditor shall deliver or place in the mail the special information booklet not later than three business days after the consumer's application is received. However, if the creditor denies the consumer's application before the end of the three-business-day period, the creditor need not provide the booklet. If a consumer uses a mortgage broker, the mortgage broker shall provide the special information booklet and the creditor need not do so.

(ii) In the case of a home equity line of credit subject to § 1026.40, a creditor or mortgage broker that provides the consumer with a copy of the brochure entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit," or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

(iii) The creditor or mortgage broker need not provide the booklet to the consumer for a transaction, the purpose of which is not the purchase of a one-to-four family residential property, including, but not limited to, the following:

(A) Refinancing transactions;

(B) Closed-end loans secured by a subordinate lien; and

(C) Reverse mortgages.

* * * * *

■ 5. Section 1026.23 is amended by revising paragraphs (g)(1), (g)(2), and (h)(2) to read as follows:

§ 1026.23 Right of rescission.

* * * * *

(g) *Tolerances for accuracy*—(1) *One-half of 1 percent tolerance.* Except as provided in paragraphs (g)(2) and (h)(2) of this section:

(i) The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) Is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(ii) The total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of this section if the disclosed total of payments:

(A) Is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(2) *One percent tolerance.* In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 1026.32), if there is no new advance and no consolidation of existing loans:

(i) The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) Is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(ii) The total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of this section if the disclosed total of payments:

(A) Is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(h) * * *

(2) *Tolerance for disclosures.* After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation:

(i) The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) Is understated by no more than $35; or

(B) Is greater than the amount required to be disclosed.

(ii) The total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of this section if the disclosed total of payments:

(A) Is understated by no more than $35; or

(B) Is greater than the amount required to be disclosed.

Subpart D—Miscellaneous

■ 6. Section 1026.25 is amended by revising paragraph (c)(1) heading to read as follows:

§ 1026.25 Record retention.

* * * * *

(c) * * *(1) *Records related to requirements for loans secured by real property or a cooperative unit*—

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 7. Section 1026.37 is amended by revising paragraph (b) introductory text, paragraphs (b)(1), (c)(5)(i), (d)(2), (h)(1)(iii), (h)(1)(v), and (h)(1)(vii), paragraph (h)(2) heading and introductory text, and paragraphs (h)(2)(iii) and (o)(4) to read as follows:

§ 1026.37 Content of disclosures for certain mortgage transactions (Loan Estimate).

* * * * *

(b) *Loan terms.* A separate table under the heading "Loan Terms" that contains the following information and that satisfies the following requirements:

(1) *Loan amount.* The total amount the consumer will borrow, as reflected by the face amount of the note, labeled "Loan Amount."

* * * * *

(c) * * *

(5) * * *

(i) The taxable assessed value of the property securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, if known, whether or not such construction will be financed from the proceeds of the transaction, for property taxes; and

* * * * *

(d) * * *

(2) *Optional alternative table for transactions without a seller and simultaneous loans for subordinate financing.* For transactions that do not involve a seller, or for simultaneous loans for subordinate financing, instead of the amount and statements described in paragraph (d)(1)(ii) of this section, the creditor may alternatively disclose, using the label "Cash to Close":

(i) The amount calculated in accordance with (h)(2)(iv) of this section;

(ii) A statement of whether the disclosed estimated amount is due from or to the consumer; and

(iii) A statement referring the consumer to the alternative table disclosed under paragraph (h)(2) of this section for details.

* * * * *

(h) * * *

(1) * * *

(iii) *Down payment and other funds from borrower.* Labeled "Down Payment/Funds from Borrower":

(A)(*1*) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, the amount determined by subtracting the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) from the sale price of the property disclosed under paragraph (a)(7) of this section, except as required by paragraph (h)(1)(iii)(A)(*2*) of this section;

(*2*) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, when the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) exceeds the sale price of the property disclosed under paragraph (a)(7) of this section, the amount of estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section; or

(B) In all transactions not subject to paragraph (h)(1)(iii)(A) of this section, the estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section;

* * * * *

(v) *Funds for borrower.* The amount of funds for the consumer, labeled "Funds for Borrower." The amount of funds from the consumer disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable, and of funds for the consumer disclosed under this paragraph (h)(1)(v), are determined by subtracting the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) (less any amount disclosed under paragraph (h)(1)(ii) of this section) from the total amount of all existing debt being satisfied in the transaction;

(A) If the calculation under this paragraph (h)(1)(v) yields an amount that is a positive number, such amount is disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable, and $0 is disclosed under this paragraph (h)(1)(v);

(B) If the calculation under this paragraph (h)(1)(v) yields an amount that is a negative number, such amount is disclosed under this paragraph (h)(1)(v) as a negative number, and $0 is disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable;

(C) If the calculation under this paragraph (h)(1)(v) yields $0, then $0 is disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable, and under this paragraph (h)(1)(v);

* * * * *

(vii) *Adjustments and other credits.* The amount of all loan costs determined under paragraph (f) and other costs determined under paragraph (g) that are paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts that are required to be paid by the consumer at closing pursuant to a purchase and sale contract, labeled "Adjustments and Other Credits"; and

* * * * *

(2) *Optional alternative calculating cash to close table for transactions without a seller and simultaneous loans for subordinate financing.* For transactions that do not involve a seller, or for simultaneous loans for subordinate financing, instead of the table described in paragraph (h)(1) of this section, the creditor may alternatively provide, in a separate table, under the master heading "Closing Cost Details," under the heading "Calculating Cash to Close," the total amount of cash or other funds that must be provided by the consumer at consummation with an itemization of that amount into the following component amounts:

* * * * *

(iii) *Payoffs and payments.* The total amount of payoffs and payments to be made to third parties not otherwise disclosed under paragraphs (f) and (g) of this section, labeled "Total Payoffs and Payments";

* * * * *

(o) * * *

(4) *Rounding*—(i) *Nearest dollar.* (A) The dollar amounts required to be disclosed by paragraphs (b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l) of this section shall be rounded to the nearest whole dollar, except that the per diem amount required to be disclosed by paragraph (g)(2)(iii) of this section and the monthly amounts required to be disclosed by paragraphs (g)(3)(i) through (iii) and (g)(3)(v) of this section shall be rounded to the nearest cent and disclosed to two decimal points.

(B) The dollar amount required to be disclosed by paragraph (b)(1) of this section shall not be rounded, and if the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(C) The dollar amounts required to be disclosed by paragraph (c)(2)(iv) of this section shall be rounded to the nearest whole dollar, if any of the component amounts are required by paragraph (o)(4)(i)(A) of this section to be rounded to the nearest whole dollar.

(ii) *Percentages.* The percentage amounts required to be disclosed under paragraphs (b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), (l)(2), and (l)(3) of this section shall be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros that occur to the right of the decimal place.

* * * * *

■ 8. Section 1026.38 is amended by revising paragraph (a)(3)(iii), paragraphs (d)(2) and (e) heading and introductory text, and paragraphs (e)(2)(ii), (e)(2)(iii)(A)(*3*), (e)(4)(ii), (g)(1), (i)(1)(iii)(A)(*3*), (i)(4)(ii), (i)(6)(iv), (i)(7)(iii), (i)(8), (j)(2)(i), (j)(2)(vi), (l)(7)(i), (o)(1), (t)(4)(ii), and (t)(5)(vii) to read as follows:

§ 1026.38 Content of disclosures for certain mortgage transactions (Closing Disclosure).

* * * * *

(a) * * *

(3) * * *

(iii) *Disbursement date.* The date the amounts disclosed under paragraphs (j)(3)(iii) (cash to close from or to borrower) and (k)(3)(iii) (cash from or to seller) of this section are expected to be paid in a purchase transaction under § 1026.37(a)(9)(i) to the consumer and seller, respectively, as applicable, or the date some or all of the loan amount disclosed under § 1026.38(b) is expected to be paid to the consumer or a third party in a transaction that is not a purchase transaction under § 1026.37(a)(9)(i), labeled "Disbursement Date."

* * * * *

(d) * * *

(2) *Alternative table for transactions without a seller and simultaneous loans for subordinate financing.* For transactions that do not involve a seller and simultaneous loans for subordinate financing, if the creditor disclosed the optional alternative table under § 1026.37(d)(2), the creditor shall disclose, with the label "Cash to Close," instead of the sum of the dollar amounts described in paragraph (d)(1)(ii) of this section:

(i) The amount calculated in accordance with paragraph (e)(5)(ii) of this section;

(ii) A statement of whether the disclosed amount is due from or to the consumer; and

(iii) A statement referring the consumer to the table required under paragraph (e) of this section for details.

(e) *Alternative calculating cash to close table for transactions without a seller and simultaneous loans for subordinate financing.* For transactions that do not involve a seller and simultaneous loans for subordinate financing, if the creditor disclosed the optional alternative table under § 1026.37(h)(2), the creditor shall disclose, instead of the table described in paragraph (i) of this section, in a separate table, under the heading "Calculating Cash to Close," together with the statement "Use this table to see what has changed from your Loan Estimate":

* * * * *

(2) * * *

(ii) Under the subheading "Final," the amount disclosed under paragraph (h)(1) of this section, disclosed as a negative number if the amount disclosed under paragraph (h)(1) of this section is a positive number and disclosed as a positive number if the amount disclosed under paragraph (h)(1) of this section is a negative number; and

(iii) * * *

(A) * * *

(*3*) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess and, if any refund is provided under § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section or, if applicable, a statement directing the consumer to the disclosure of the reduction in principal balance (principal curtailment) disclosed under paragraph (g)(4) or (t)(5)(vii)(B) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

* * * * *

(4) * * *

(ii) Under the subheading "Final," the total amount of payoffs and payments made to third parties disclosed under paragraph (t)(5)(vii)(B) of this section, to the extent known, disclosed as a negative number if the amount disclosed under paragraph (t)(5)(vii)(B) of this section is a positive number and disclosed as a positive number if the amount disclosed under paragraph (t)(5)(vii)(B) of this section is a negative number;

* * * * *

(g) * * *

(1) *Taxes and other government fees.* Under the subheading "Taxes and Other Government Fees," an itemization of each amount that is expected to be paid to State and local governments for taxes and government fees and the total of all such itemized amounts that are designated borrower-paid at or before closing, as follows:

(i) On the first line:

(A) Before the columns described in paragraph (g) of this section, the total amount of fees for recording deeds and, separately, the total amount of fees for recording security instruments; and

(B) In the applicable column as described in paragraph (g) of this section, the total amounts paid for recording fees (including, but not limited to, the amounts in paragraph (g)(1)(i)(A) of this section); and

(ii) On subsequent lines, in the applicable column as described in paragraph (g) of this section, an itemization of transfer taxes, with the name of the government entity assessing the transfer tax.

* * * * *

(i) * * *

(1) * * *

(iii) * * *

(A) * * *

(*3*) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess and, if any refund is provided under § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section or, if a reduction in principal balance (principal curtailment) is used to provide the refund, a statement directing the consumer to the disclosure required under paragraph (g)(4), (j)(4)(i), or (t)(5)(ix) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

* * * * *

(4) * * *

(ii) Under the subheading "Final":

(A)(*1*) In a purchase transaction as defined in § 1026.37(a)(9)(i), the amount determined by subtracting the sum of the loan amount disclosed under paragraph (b) of this section, and any amount of existing loans assumed or taken subject to disclosed under paragraph (j)(2)(iv) of this section from the sale price of the property disclosed under paragraph (j)(1)(ii) of this section, labeled "Down Payment/Funds from Borrower," except as required by paragraph (i)(4)(ii)(A)(*2*) of this section;

(*2*) In a purchase transaction as defined in § 1026.37(a)(9)(i), when the sum of the loan amount disclosed under paragraph (b) of this section, and any amount of existing loans assumed or taken subject to disclosed under paragraph (j)(2)(iv) of this section exceeds the sale price disclosed under paragraph (j)(1)(ii) of this section, the amount of funds from the consumer as determined in accordance with paragraph (i)(6)(iv) of this section labeled "Down Payment/Funds from Borrower;" or

(B) In all transactions not subject to paragraph (i)(4)(ii)(A) of this section, the "Funds from Borrower" as determined in accordance with paragraph (i)(6)(iv) of this section, labeled "Down Payment/Funds from Borrower."

* * * * *

(6) * * *

(iv) The "Funds from Borrower" to be disclosed under paragraph (i)(4)(ii)(A)(*2*) or (i)(4)(ii)(B) of this section, as applicable, and "Funds for Borrower" to be disclosed under paragraph (i)(6)(ii) of this section are determined by subtracting the sum of the loan amount disclosed under paragraph (b) of this section and any amount for existing loans assumed or taken subject to disclosed under paragraph (j)(2)(iv) of this section (less any closing costs financed disclosed under paragraph (i)(3)(ii) of this section) from the total amount of all existing debt being satisfied in the real estate closing disclosed under paragraphs (j)(1)(ii), (iii), and (v) of this section.

(A) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a positive number, such amount shall be disclosed under paragraph (i)(4)(ii)(A)*(2)* or (i)(4)(ii)(B) of this section, as applicable, and $0.00 shall be disclosed under paragraph (i)(6)(ii) of this section.

(B) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a negative number, such amount shall be disclosed under paragraph (i)(6)(ii) of this section, stated as a negative number, and $0.00 shall be disclosed under paragraph (i)(4)(ii)(A)*(2)* or (i)(4)(ii)(B) of this section, as applicable.

(C) If the calculation under this paragraph (i)(6)(iv) yields $0, $0.00 shall be disclosed under paragraph (i)(4)(ii)(A)*(2)* or (i)(4)(ii)(B) of this section, as applicable, and under paragraph (i)(6)(ii) of this section.

(7) * * *

(iii) Under the subheading "Did this change?," disclosed more prominently than the other disclosures under this paragraph (i)(7):

(A) If the amount disclosed under paragraph (i)(7)(ii) of this section is different than the amount disclosed under paragraph (i)(7)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraph (j)(2)(v) of this section and, as applicable, in the seller-paid column under paragraphs (f) and (g) of this section; or

(B) If the amount disclosed under paragraph (i)(7)(ii) of this section is equal to the amount disclosed under paragraph (i)(7)(i) of this section, a statement of that fact.

(8) *Adjustments and other credits.* (i) Under the subheading "Loan Estimate," the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii), labeled "Adjustments and Other Credits."

(ii) Under the subheading "Final," the amount equal to the total of the amounts disclosed under paragraphs (j)(1)(iii) and (v) of this section to the extent amounts in paragraphs (j)(1)(iii) and (v) were not included in the calculation required by paragraph (i)(4) or (6) of this section, and paragraphs (j)(1)(vi) through (x) of this section reduced by the total of the amounts disclosed under paragraphs (j)(2)(vi) through (xi) of this section.

(iii) Under the subheading "Did this change?," disclosed more prominently than the other disclosures under this paragraph (i)(8):

(A) If the amount disclosed under paragraph (i)(8)(ii) of this section is different than the amount disclosed under paragraph (i)(8)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraphs (j)(1)(iii) and (v) through (x) and (j)(2)(vi) through (xi) of this section, as applicable; or

(B) If the amount disclosed under paragraph (i)(8)(ii) of this section is equal to the amount disclosed under paragraph (i)(8)(i) of this section, a statement of that fact.

* * * * *

(j) * * *

(2) *Itemization of amounts already paid by or on behalf of borrower.* (i) The sum of the amounts disclosed in paragraphs (j)(2)(ii) through (xi) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled "Paid Already by or on Behalf of Borrower at Closing";

* * * * *

(vi) Descriptions and amounts of other items paid by or on behalf of the consumer and not otherwise disclosed under paragraphs (f), (g), (h), and (j)(2) of this section, labeled "Other Credits," and descriptions and the amounts of any additional amounts owed the consumer but payable to the seller before the real estate closing, under the heading "Adjustments";

* * * * *

(l) * * *

(7) *Escrow account.* Under the subheading "Escrow Account":

(i) Under the reference "For now," a statement that an escrow account may also be called an impound or trust account, a statement of whether the creditor has established or will establish (at or before consummation) an escrow account in connection with the transaction, and the information required under paragraph (l)(7)(i)(A) and (B) of this section:

(A) A statement that the creditor may be liable for penalties and interest if it fails to make a payment for any cost for which the escrow account is established, a statement that the consumer would have to pay such costs directly in the absence of the escrow account, and a table, titled "Escrow," that contains, if an escrow account is or will be established, an itemization of the amounts listed in this paragraph (l)(7)(i)(A)*(1)* through *(4)*;

(1) The total amount the consumer will be required to pay into an escrow account over the first year after consummation, labeled "Escrowed Property Costs over Year 1," together with a descriptive name of each charge to be paid (in whole or in part) from the escrow account, calculated as the amount disclosed under paragraph (l)(7)(i)(A)*(4)* of this section multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation;

(2) The estimated amount the consumer is likely to pay during the first year after consummation for the mortgage-related obligations described in § 1026.43(b)(8) that are known to the creditor and that will not be paid using escrow account funds, labeled "Non-Escrowed Property Costs over Year 1," together with a descriptive name of each such charge and a statement that the consumer may have to pay other costs that are not listed;

(3) The total amount disclosed under paragraph (g)(3) of this section, a statement that the payment is a cushion for the escrow account, labeled "Initial Escrow Payment," and a reference to the information disclosed under paragraph (g)(3) of this section;

(4) The amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation, labeled "Monthly Escrow Payment."

(5) A creditor complies with the requirements of paragraphs (l)(7)(i)(A)*(1)* and (l)(7)(i)(A)*(4)* of this section if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17.

(B) A statement of whether the consumer will not have an escrow account, the reason why an escrow account will not be established, a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, a statement that the consumer may contact the creditor to inquire about the availability of an escrow account, and a table, titled "No Escrow," that contains, if an escrow account will not be established, an itemization of the following:

(1) The estimated total amount the consumer will pay directly for the mortgage-related obligations described in § 1026.43(b)(8) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the

consumer must pay the identified costs, possibly in one or two large payments, labeled "Property Costs over Year 1"; and

(*2*) The amount of any fee the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, labeled "Escrow Waiver Fee."

* * * * *

(o) * * *

(1) *Total of payments.* The "Total of Payments," using that term and expressed as a dollar amount, and a statement that the disclosure is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. The disclosed total of payments shall be treated as accurate if the amount disclosed as the total of payments:

(i) Is understated by no more than $100; or

(ii) Is greater than the amount required to be disclosed.

* * * * *

(t) * * *

(4) * * *

(ii) *Percentages.* The percentage amounts required to be disclosed under paragraphs (b), (f)(1), (n), (o)(4), and (o)(5) of this section shall be disclosed by rounding to three decimal places and then dropping any trailing zeros to the right of the decimal point.

* * * * *

(5) * * *

(vii) *Transaction without a seller and simultaneous loans for subordinate financing.* The following modifications to form H–25 of appendix H to this part may be made for a transaction that does not involve a seller, or for simultaneous loans for subordinate financing, and for which the alternative tables are disclosed under paragraphs (d)(2) and (e) of this section, as illustrated by form H–25(J) of appendix H to this part:

(A) The information required by paragraph (a)(4)(ii), and paragraphs (f), (g), and (h) of this section with respect to costs paid by the seller, may be deleted.

(B) A table under the master heading "Closing Cost Details" required by paragraph (f) of this section may be added with the heading "Payoffs and Payments" that itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer in connection with the transaction, including designees of the consumer; the payees and a description of the purpose of such disbursements under the subheading "To"; and the total amount of such payments labeled "Total Payoffs and Payments."

(C) The tables required to be disclosed by paragraphs (j) and (k) of this section may be deleted.

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open End Credit Offered to College Students

■ 9. In *Supplement I to Part 1026—Official Interpretations:*

■ a. Under *Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability,* under *1(d)—Organization,* under *Paragraph 1(d)(5),* paragraph 1 is revised.

■ b. Under *Section 1026.2—Definitions and Rules of Construction,* under *2(a)(11)—Consumer,* paragraph 3 is revised.

■ c. Under *Section 1026.3—Exempt Transactions,* under *3(h)—Partial exemption for certain mortgage loans,* paragraph 2 is revised and paragraphs 3 and 4 are added.

■ d. Under *Section 1026.17—General Disclosure Requirements:*

■ i. Under *17(c)—Basics of Disclosures and Use of Estimates,* under *Paragraph 17(c)(6),* paragraph 5 is revised and paragraph 6 is added.

■ ii. Under *17(f)—Early Disclosures,* paragraphs 1 and 2 are revised.

■ e. Under *Section 1026.18—Content of Disclosures:*

■ i. Paragraph 3 is revised.

■ ii. Under *18(g)—Payment Schedule,* paragraph 6 is revised.

■ iii. Under *18(s)—Interest Rate and Payment Summary for Mortgage Transactions,* paragraphs 1 and 4 are revised.

■ f. Under *Section 1026.19—Certain Mortgage and Variable-Rate Transactions:*

■ i. Under *19(e)—Mortgage loans secured by real property—Early disclosures:*

■ A. The heading is revised.

■ B. Under *19(e)(1)(i)—Creditor,* paragraph 1 is revised and paragraph 2 is added.

■ C. Under *19(e)(1)(iii)—Timing,* paragraph 5 is added.

■ D. Under *19(e)(1)(vi)—Shopping for settlement service providers,* paragraphs 2 through 4 are revised.

■ E. Under *19(e)(3)(i)—General rule,* paragraph 1 is revised and paragraph 8 is added.

■ F. Under *19(e)(3)(ii)—Limited increases permitted for certain charges,* paragraph 2 is revised.

■ G. Under *19(e)(3)(iii)—Variations permitted for certain charges,* paragraphs 2 and 3 are revised and paragraph 4 is added.

■ H. Under *19(e)(3)(iv)—Revised estimates,* paragraph 2 is revised and paragraphs 4 and 5 are added.

■ I. Under *19(e)(3)(iv)(D)—Interest rate dependent charges,* paragraph 1 is revised and paragraph 2 is added.

■ J. Under *19(e)(3)(iv)(E)—Expiration,* paragraph 1 is revised and paragraph 2 is added.

■ K. Under *19(e)(4)(ii)—Relationship to disclosures required under § 1026.19(f)(1)(i),* the heading is revised and paragraph 2 is added.

■ ii. Under *19(f)—Mortgage loans secured by real property—Final disclosures:*

■ A. The heading is revised.

■ B. Under *19(f)(1)(i)—Scope,* paragraph 1 is revised.

■ C. Under *19(f)(2)(iii)—Changes due to events occurring after consummation,* paragraph 2 is added.

■ D. Under *19(f)(2)(v)—Refunds related to the good faith analysis,* paragraph 1 is revised.

■ E. Under *19(f)(3)(ii)—Average charge,* paragraph 3 is revised.

■ F. Under *19(f)(4)(i)—Provision to seller,* paragraph 1 is revised and paragraph 2 is added.

■ g. Under *Section 1026.23—Right of Rescission:*

■ i. Under *23(g)—Tolerances for Accuracy,* paragraph 1 is added.

■ ii. Under *23(h)—Special Rules for Foreclosure,* under *23(h)(2)—Tolerance for Disclosures,* paragraph 1 is revised and paragraph 2 is added.

■ h. Under *Section 1026.25—Record Retention,* under *25(c)—Records Related to Certain Requirements for Mortgage Loans,* under *25(c)(1)—Records related to requirements for loans secured by real property,* the heading is revised.

■ i. Under *Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate):*

■ i. Under *37(a)—General information:*

■ A. Under *37(a)(7)—Sale price,* paragraphs 1 and 2 are revised.

■ B. Under *37(a)(8)—Loan term,* paragraph 3 is added.

■ C. Under *37(a)(9)—Purpose,* paragraph 1 is revised.

■ D. Under *37(a)(10)—Product,* paragraph 2 is revised.

■ E. Under *37(a)(13)—Rate lock,* paragraph 2 is revised and paragraph 4 is added.

■ ii. Under *37(b)—Loan terms:*

■ A. Under *37(b)(2)—Interest rate,* paragraph 1 is revised.

■ B. Under *37(b)(3)—Principal and interest payment,* paragraph 2 is revised.

■ C. Under *37(b)(6)(iii)—Increase in periodic payment,* paragraph 1 is revised.

■ iii. Under *37(c)—Projected payments:*

■ A. Paragraph 2 is added.

■ B. Under *Paragraph 37(c)(1)(iii)(B),* paragraph 1 is revised.

■ C. Under *Paragraph 37(c)(4)(iv),* paragraph 2 is revised.

■ iv. Under *37(d)—Costs at closing,* under *37(d)(2)—Optional alternative table for transactions without a seller,* the heading is revised and paragraph 1 is revised.

■ v. Under *37(f)—Closing cost details; loan costs:*

■ A. Paragraph 3 is added.

■ B. Under *37(f)(6)—Use of addenda,* paragraph 3 is added.

■ vi. Under *37(g)—Closing cost details; other costs:*

■ A. Under *37(g)(4)—Other,* paragraph 4 is revised.

■ B. Under *Paragraph 37(g)(6)(ii),* paragraph 1 is revised.

■ vii. Under *37(h)—Calculating cash to close:*

■ A. Under *37(h)(1)—For all transactions,* paragraph 2 is added.

■ B. Under *37(h)(1)(ii)—Closing costs financed,* paragraph 1 is revised and paragraph 2 is added.

■ C. Under *37(h)(1)(iii)—Downpayment and other funds from borrower,* the heading is revised, paragraph 1 is revised and paragraph 2 is added.

■ D. Under *37(h)(1)(v)—Funds for borrower,* paragraph 1 is revised and paragraph 2 is added.

■ E. Under *37(h)(1)(vi)—Seller credits,* paragraphs 1 and 2 are revised.

■ F. Under *37(h)(1)(vii)—Adjustments and other credits,* paragraphs 1, 5, and 6 are revised.

■ G. Under *37(h)(2)—Optional alternative calculating cash to close table for transactions without a seller,* the heading is revised and paragraph 1 is revised.

■ H. Under *37(h)(2)(iii)—Payoffs and payments,* paragraph 1 is revised and paragraph 2 is added.

■ viii. Under *37(k)—Contact information,* paragraph 3 is revised.

■ ix. Under *37(l)—Comparisons:*

■ A. Under *Paragraph 37(l)(1)(i),* paragraph 1 is revised.

■ B. Under *37(l)(3)—Total interest percentage,* paragraph 1 is revised.

■ x. Under *37(o)—Form of disclosures:*

■ A. Under *Paragraph 37(o)(4)(i)(A),* paragraph 1 is revised.

■ B. Under *37(o)(4)(ii)—Percentages,* paragraph 1 is revised.

■ j. Under *Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure):*

■ i. Paragraph 4 is added.

■ ii. Under *38(a)—General information:*

■ A. Following *38(a)(3)(i)—Date issued* and paragraph 1 thereunder, heading *38(a)(3)(iii)—Disbursement date* and paragraph 1 thereunder are added.

■ B. Under *38(a)(3)(vii)—Sale price,* paragraph 1 is revised.

■ C. Under *38(a)(4)—Transaction information,* paragraph 2 is revised and paragraph 4 is added.

■ iii. Under *38(d)—Costs at closing,* under *38(d)(2)—Alternative table for transactions without a seller,* the heading is revised and paragraph 1 is revised.

■ iv. Under *38(e)—Alternative calculating cash to close table for transactions without a seller:*

■ A. The heading is revised, paragraph 1 is revised and paragraph 6 is added.

■ B. Under *Paragraph 38(e)(2)(iii)(A),* paragraph 3 is revised.

■ C. Under *Paragraph 38(e)(3)(iii)(B),* paragraph 1 is revised.

■ v. Under *38(f)—Closing cost details; loan costs,* paragraph 2 is added.

■ vi. Under *38(g)—Closing costs details; other costs:*

■ A. Under *38(g)(1)—Taxes and other government fees,* paragraph 3 is added.

■ B. Under *38(g)(2)—Prepaids,* paragraph 3 is revised.

■ C. Under *38(g)(4)—Other,* paragraph 1 is revised.

■ vii. Under *38(i)—Calculating cash to close:*

■ A. Paragraphs 2 and 3 are revised and paragraph 5 is added.

■ B. Under *Paragraph 38(i)(1)(iii)(A),* paragraph 3 is revised.

■ C. Under *Paragraph 38(i)(2)(iii)(B),* paragraph 1 is revised.

■ D. Following *Paragraph 38(i)(2)(iii)(B)* and paragraph 1 thereunder, heading *38(i)(3)—Closing costs financed* and paragraphs 1 and 2 thereunder are added.

■ E. Under *Paragraph 38(i)(4)(ii)(A),* paragraph 1 is revised and paragraph 2 is added.

■ F. Under *Paragraph 38(i)(4)(ii)(B),* paragraph 1 is revised.

■ G. Under *Paragraph 38(i)(4)(iii)(A),* paragraph 1 is revised.

■ H. Under *38(i)(5)—Deposit,* paragraph 1 is revised.

■ I. Under *Paragraph 38(i)(6)(ii),* paragraph 1 is revised and paragraph 2 is added.

■ J. Following *Paragraph 38(i)(7)(ii)* and paragraph 1 thereunder, *Paragraph 38(i)(7)(iii)(A)* heading and paragraph 1 thereunder are added.

■ K. Under *Paragraph 38(i)(8)(ii),* paragraph 1 is revised.

■ viii. Under *38(j)—Summary of borrower's transaction:*

■ A. Paragraph 3 is revised.

■ B. Under *Paragraph 38(j)(1)(ii),* paragraph 1 is revised.

■ C. Under *Paragraph 38(j)(1)(v),* paragraphs 1 and 2 are revised.

■ D. Under *Paragraph 38(j)(2)(vi),* paragraphs 2 and 5 are revised and paragraph 6 is added.

■ E. Under *Paragraph 38(j)(2)(xi),* paragraph 1 is revised.

■ F. Under *Paragraph 38(j)(4)(i),* paragraph 1 is revised.

■ ix. Under *38(k)—Summary of seller's transaction,* paragraph 1 is revised.

■ x. Under *38(l)—Loan disclosures:*

■ A. Under *38(l)(7)—Escrow account,* paragraph 1 is added.

■ B. Under *Paragraph 38(l)(7)(i)(A)(2),* paragraph 1 is revised and paragraph 2 is added.

■ C. Under *Paragraph 38(l)(7)(i)(A)(4),* paragraph 1 is revised.

■ D. Following heading *Paragraph 38(l)(7)(i)(A)(4)* and paragraph 1 thereunder, *Paragraph 38(l)(7)(i)(A)(5)* heading and paragraph 1 thereunder are added.

■ E. Under *Paragraph 38(l)(7)(i)(B)(1),* paragraph 1 is revised.

■ xi. Under *38(o)—Loan calculations:*

■ A. Paragraph 1 is added.

■ B. Under *38(o)(1)—Total of payments,* paragraph 1 is revised.

■ xii. Under *38(t)—Form of disclosures:*

■ A. Under *38(t)(3)—Form,* paragraph 1 is revised.

■ B. Following heading *Paragraph 38(t)(5)(iv)* and paragraph 3 thereunder, *Paragraph 38(t)(5)(v)* heading and paragraphs 1 through 3 thereunder are added.

■ C. Following heading *Paragraph 38(t)(5)(v)* and paragraph 3 thereunder, *Paragraph 38(t)(5)(vi)* heading and paragraph 1 thereunder are added.

■ D. Under *38(t)(5)(vii)—Transactions without a seller,* the heading is revised, and paragraph 2 is revised.

■ E. Following heading *38(t)(5)(vii)—Transactions without a seller and simultaneous loans for subordinate financing,* as revised, and paragraph 2 thereunder, *Paragraph 38(t)(5)(vii)(B)* heading and paragraphs 1 through 3 are added.

■ F. Under *38(t)(5)(ix)—Customary recitals and information,* paragraph 1 is revised.

■ k. Under *Appendix D—Multiple-Advance Construction Loans,* paragraph 7 is revised.

■ l. Under *Appendix H—Closed-End Forms and Clauses,* paragraph 30 is revised.

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

* * * * *

1(d) Organization.

Paragraph 1(d)(5).

1. *Effective date.* i. *General.* The Bureau's revisions to Regulation X and Regulation Z published on December 31, 2013, (the TILA–RESPA Final Rule) apply to covered loans (closed-end credit transactions, other than reverse mortgages, that are secured by real property or a cooperative unit, whether or

not treated as real property under State or other applicable law) for which the creditor or mortgage broker receives an application on or after October 3, 2015 (the effective date), except that § 1026.19(e)(2), the amendments to § 1026.28(a)(1), and the amendments to the commentary to § 1026.29 became effective on October 3, 2015, without respect to whether an application was received as of that date. Additionally, §§ 1026.20(e) and 1026.39(d)(5), as amended or adopted by the TILA–RESPA Final Rule, took effect on October 3, 2015, for transactions for which the creditor or mortgage broker received an application on or after October 3, 2015, and take effect October 1, 2017, with respect to transactions for which a creditor or mortgage broker received an application prior to October 3, 2015.

ii. *Pre-application activities.* The provisions of § 1026.19(e)(2) apply prior to a consumer's receipt of the disclosures required by § 1026.19(e)(1)(i) and therefore restrict activity that may occur prior to receipt of an application by a creditor or mortgage broker. These provisions include § 1026.19(e)(2)(i), which restricts the fees that may be imposed on a consumer, § 1026.19(e)(2)(ii), which requires a statement to be included on written estimates of terms or costs specific to a consumer, and § 1026.19(e)(2)(iii), which prohibits creditors from requiring the submission of documents verifying information related to the consumer's application. Accordingly, the provisions of § 1026.19(e)(2) are effective on October 3, 2015, without respect to whether an application has been received on that date.

iii. *Determination of preemption.* The amendments to § 1026.28 and the commentary to § 1026.29 govern the preemption of State laws, and thus the amendments to those provisions and associated commentary made by the TILA–RESPA Final Rule are effective on October 3, 2015, without respect to whether an application has been received on that date.

iv. *Post-consummation escrow cancellation disclosure and partial payment disclosure.* A creditor, servicer, or covered person, as applicable, must provide the disclosures required by §§ 1026.20(e) and 1026.39(d)(5) for transactions for which the conditions in § 1026.20(e) or § 1026.39(d)(5), as applicable, exist on or after October 1, 2017, regardless of when the corresponding applications were received. For transactions in which such conditions exist on or after October 3, 2015, through September 30, 2017, a creditor, servicer, or covered person, as applicable, complies with §§ 1026.20(e) and 1026.39(d)(5) if it provides the mandated disclosures in all cases or if it provides them only in cases where the corresponding applications were received on or after October 3, 2015.

v. *Examples.* For purposes of the following examples, an application received before or after the effective date is any submission for the purpose of obtaining an extension of credit that satisfies the definition in § 1026.2(a)(3), as adopted by the TILA–RESPA Final Rule, even if that definition was not yet in effect on the date in question. Cross-references in the following examples to provisions of Regulation Z refer to those provisions as adopted or amended by the TILA–RESPA Final Rule, together with any subsequent amendments, unless noted otherwise.

A. *Application received on or after effective date of the TILA–RESPA Final Rule.* Assume a creditor receives an application on October 3, 2015, and that consummation of the transaction occurs on October 31, 2015. The amendments of the TILA–RESPA Final Rule, including the requirement to provide the Loan Estimate and Closing Disclosure under § 1026.19(e) and (f), apply to the transaction. The creditor is also required to provide the special information booklet under § 1026.19(g).

B. *Application received before effective date.* Assume a creditor receives an application on September 30, 2015, and that consummation of the transaction occurs on October 30, 2015. The requirement to provide the Loan Estimate and Closing Disclosure under § 1026.19(e) and (f) does not apply to the transaction. Instead, the creditor and the settlement agent must provide the disclosures required by § 1026.19, as it existed prior to the effective date, and by Regulation X, 12 CFR 1024.8. Similarly, the creditor must provide the special information booklet required by Regulation X, 12 CFR 1024.6. However, the provisions of § 1026.19(e)(2) apply to the transaction beginning on October 3, 2015, because they became effective on October 3, 2015, without respect to whether an application was received by the creditor or mortgage broker on that date.

C. *Predisclosure written estimates.* Assume a creditor receives a request from a consumer for a written estimate of terms or costs specific to the consumer on October 3, 2015, before the consumer submits an application to the creditor and thus before the consumer has received the disclosures required by § 1026.19(e)(1)(i). The creditor, if it provides such a written estimate to the consumer, must comply with § 1026.19(e)(2)(ii) and provide the required statement on the written estimate, even though the creditor has not received an application on that date.

D. *Request for preemption determination.* Assume a creditor submits a request to the Bureau under § 1026.28(a)(1) for a determination of whether a State law is inconsistent with the disclosure requirements in Regulation Z on October 3, 2015. Because the amendments to § 1026.28(a)(1) are effective on that date and do not depend on whether the creditor has received an application, § 1026.28(a)(1) is applicable to the request on that date, and the Bureau would make a determination based on the provisions of Regulation Z in effect on that date, including the requirements of § 1026.19(e) and (f).

E. *Application of the effective dates for the post-consummation escrow cancelation disclosure and partial payment disclosure.* Assume a creditor receives an application for a mortgage loan on October 10, 2010, and the loan was consummated. Assume further that, on December 18, 2016, the escrow account established in connection with the mortgage loan is canceled or the loan is sold to another covered person. A creditor, servicer, or covered person, as applicable, complies with §§ 1026.20(e) and 1026.39(d)(5) if it provides the disclosures required by those provisions to the consumer, but the creditor, servicer, or covered person, as applicable, is not required to provide the disclosures in this case. Assume the same circumstances, except that the escrow account established in connection with the loan is canceled or the mortgage loan is sold to another covered person on April 14, 2018. A creditor, servicer, or covered person, as applicable, must provide the disclosures in § 1026.20(e) or 1026.39(d)(5), as applicable, because a condition requiring these disclosures occurred after October 1, 2017 (thus the date the application was received is irrelevant).

Section 1026.2—Definitions and Rules of Construction

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2(a)(11) Consumer.

* * * * *

3. *Trusts.* Credit extended to trusts established for taxation or estate planning purposes or to land trusts, as described in comment 3(a)–10, is considered to be extended to a natural person for purposes of the definition of consumer.

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Section 1026.3—Exempt Transactions

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3(h) Partial exemption for certain mortgage loans.

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2. *Requirements of exemption.* The conditions that the transaction not require the payment of interest under § 1026.3(h)(3) and that repayment of the amount of credit extended be forgiven or deferred in accordance with § 1026.3(h)(4) are determined by the terms of the credit contract. The other requirements of § 1026.3(h) need not be reflected in the credit contract, but the creditor must retain evidence of compliance with those provisions, as required by § 1026.25(a). In particular, because the exemption from § 1026.19(e), (f), and (g) means the consumer will not receive the disclosures of closing costs under § 1026.37 or § 1026.38, the creditor must retain evidence reflecting that the costs payable by the consumer in connection with the transaction at consummation are limited to recording fees, transfer taxes, application fees, and housing counseling fees, and that the total of application and housing counseling fees is less than 1 percent of the amount of credit extended, in accordance with § 1026.3(h)(5). Unless the itemization of the amount financed provided to the consumer sufficiently details this requirement, the creditor must establish compliance with § 1026.3(h)(5) by some other written document and retain it in accordance with § 1026.25(a).

3. *Recording fees.* See comment 37(g)(1)–1 for a discussion of what constitutes a recording fee.

4. *Transfer taxes.* See comment 37(g)(1)–3 for a discussion of what constitutes a transfer tax.

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Section 1026.17—General Disclosure Requirements

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17(c) Basis of Disclosures and Use of Estimates.

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Paragraph 17(c)(6).

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5. *Allocation of costs.* When a creditor utilizes the special rule in § 1026.17(c)(6) to disclose credit extensions as multiple transactions, all costs of the transactions must be allocated for purposes of calculating disclosures. If a creditor chooses to disclose the credit as multiple transactions, the creditor must allocate to the construction phase all amounts that would not be imposed but for the construction financing. All other amounts must be allocated to the permanent financing. For example, inspection and handling fees for the staged disbursement of construction loan proceeds must be included in the disclosures for the construction phase and may not be included in the disclosures for the permanent phase. If a creditor charges separate application or origination fees for the construction phase and the permanent phase, such fees must be allocated to the phase for which they are charged. If a creditor charges an application or origination fee for construction financing only but charges a greater application or origination fee for construction-permanent financing, the difference between the two fees must be allocated to the permanent phase.

6. *May be permanently financed by the same creditor.* For purposes of determining whether a creditor may treat a construction-permanent loan as one transaction or more than one transaction under § 1026.17(c)(6)(ii), a loan to finance the construction of a dwelling may be permanently financed by the same creditor, within the meaning of § 1026.17(c)(6)(ii), if the creditor generally makes both construction financing and permanent financing available to qualifying consumers, unless a consumer expressly states that the consumer will not obtain permanent financing from the creditor.

* * * * *

17(f) Early Disclosures.

1. *Change in rate or other terms.* Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in § 1026.17(f) even if the prior disclosures would be considered accurate under the tolerances in § 1026.18(d) or 1026.22(a). To illustrate:

i. *Transactions not secured by real property or a cooperative unit.* A. For transactions not secured by real property or a cooperative unit, if disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than ⅛ of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

B. In a regular transaction not secured by real property or a cooperative unit, if early disclosures are marked as estimates and the disclosed annual percentage rate is within ⅛ of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

C. If disclosures for transactions not secured by real property or a cooperative unit are made on July 1, the transaction is consummated on July 15, and the finance charge increased by $35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. *See* § 1026.18(d)(2).

ii. *Reverse mortgages.* In a transaction subject to § 1026.19(a) and not § 1026.19(e) and (f), assume that, at the time the disclosures required by § 1026.19(a) are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Assume further that consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. The creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time.

iii. *Transactions secured by real property or a cooperative unit other than reverse mortgages.* For transactions secured by real property or a cooperative unit other than reverse mortgages, assume that, at the time the disclosures required by § 1026.19(e) are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Assume further that consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. The creditor must make the disclosures required by § 1026.19(f) three days before consummation, and the disclosures required by § 1026.19(f) must take into account the amount of per-diem interest that will be collected at consummation.

2. *Variable rate.* The addition of a variable rate feature to the credit terms, after early disclosures are given, requires new disclosures. See § 1026.19(e) and (f) to determine when new disclosures are required for transactions secured by real property or a cooperative unit, other than reverse mortgages.

* * * * *

Section 1026.18—Content of Disclosures

* * * * *

3. *Scope of coverage.* i. Section 1026.18 applies to closed-end consumer credit transactions, other than transactions that are subject to § 1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end consumer credit transactions that are secured by real property or a cooperative unit, other than reverse mortgages subject to § 1026.33. Accordingly, the disclosures required by § 1026.18 apply only to closed-end consumer credit transactions that are:

A. Unsecured;

B. Secured by personal property that is not a dwelling;

C. Secured by personal property (other than a cooperative unit) that is a dwelling and are not also secured by real property; or

D. Reverse mortgages subject to § 1026.33.

ii. Of the foregoing transactions that are subject to § 1026.18, the creditor discloses a payment schedule under § 1026.18(g) for those described in paragraphs i.A and i.B of this comment. For transactions described in paragraphs i.C and i.D of this comment, the creditor discloses an interest rate and payment summary table under § 1026.18(s). See also comments 18(g)–6 and 18(s)–4 for additional guidance on the applicability to different transaction types of §§ 1026.18(g) or (s) and 1026.19(e) and (f).

iii. Because § 1026.18 does not apply to transactions secured by real property or a cooperative unit, other than reverse mortgages, references in the section and its commentary to "mortgages" refer only to transactions described in paragraphs i.C and i.D of this comment, as applicable.

* * * * *

18(g) Payment Schedule.

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6. *Mortgage transactions.* Section 1026.18(g) applies to closed-end transactions, other than transactions that are subject to § 1026.18(s) or § 1026.19(e) and (f). Section 1026.18(s) applies to closed-end transactions secured by real property or a dwelling, unless they are subject to § 1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end transactions secured by real property or a cooperative unit, other than reverse mortgages. Thus, if a closed-end consumer credit transaction is secured by real property, a cooperative unit, or a dwelling and the transaction is a reverse mortgage or the dwelling is personal property but not a cooperative unit, then the creditor discloses an interest rate and payment summary table in accordance with § 1026.18(s). *See* comment 18(s)–4. If a closed-end consumer credit transaction is secured by real property or a cooperative unit and is not a reverse mortgage, the creditor discloses a projected payments table in accordance with §§ 1026.37(c) and 1026.38(c), as required by § 1026.19(e) and (f). In all such cases, the creditor is not subject to the requirements of § 1026.18(g). On the other hand, if a closed-end consumer credit transaction is not secured by real property or a dwelling (for example, if it is unsecured or secured by an automobile), the creditor discloses a payment schedule in accordance with § 1026.18(g) and is not subject to the requirements of § 1026.18(s) or §§ 1026.37(c) and 1026.38(c).

* * * * *

18(s) Interest Rate and Payment Summary for Mortgage Transactions.

1. *In general.* Section 1026.18(s) prescribes format and content for disclosure of interest rates and monthly (or other periodic) payments for reverse mortgages and certain transactions secured by dwellings that are personal property but not cooperative units. The information in § 1026.18(s)(2) through (4) is required to be in the form of a table, except as otherwise provided, with headings

and format substantially similar to model clause H–4(E), H–4(F), H–4(G), or H–4(H) in appendix H to this part. A disclosure that does not include the shading shown in a model clause but otherwise follows the model clause's headings and format is substantially similar to that model clause. Where § 1026.18(s)(2) through (4) or the applicable model clause requires that a column or row of the table be labeled using the word "monthly" but the periodic payments are not due monthly, the creditor should use the appropriate term, such as "bi-weekly" or "quarterly." In all cases, the table should have no more than five vertical columns corresponding to applicable interest rates at various times during the loan's term; corresponding payments would be shown in horizontal rows. Certain loan types and terms are defined for purposes of § 1026.18(s) in § 1026.18(s)(7).

* * * * *

4. *Scope of coverage in relation to § 1026.19(e) and (f).* Section 1026.18(s) applies to transactions secured by real property or a dwelling, other than transactions that are subject to § 1026.19(e) and (f). Those provisions apply to closed-end transactions secured by real property or a cooperative unit, other than reverse mortgages. Accordingly, § 1026.18(s) governs only closed-end reverse mortgages and closed-end transactions secured by a dwelling, other than a cooperative, that is personal property (such as a mobile home that is not deemed real property under State or other applicable law).

* * * * *

Section 1026.19—Certain Mortgage and Variable-Rate Transactions

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19(e) Mortgage loans—Early disclosures.

* * * * *

19(e)(1) Provision of disclosures.

19(e)(1)(i) Creditor.

1. *Requirements.* Section 1026.19(e)(1)(i) requires early disclosure of credit terms in closed-end credit transactions that are secured by real property or a cooperative unit, other than reverse mortgages. These disclosures must be provided in good faith. Except as otherwise provided in § 1026.19(e), a disclosure is in good faith if it is consistent with § 1026.17(c)(2)(i). Section 1026.17(c)(2)(i) provides that if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. The "reasonably available" standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. See comment 17(c)(2)(i)–1 for an explanation of the standard set forth in § 1026.17(c)(2)(i). See comment 17(c)(2)(i)–2 for labeling disclosures required under § 1026.19(e) that are estimates.

2. *Cooperative Units.* Section 1026.19(e)(1)(i) requires early disclosure of credit terms in closed-end credit transactions, other than reverse mortgages, that are secured by real property or a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

* * * * *

19(e)(1)(iii) Timing.

* * * * *

5. *Multiple-advance construction loans.* Section 1026.19(e)(1)(iii) generally requires a creditor to deliver the Loan Estimate or place it in the mail not later than the third business day after the creditor receives the consumer's application and not later than the seventh business day before consummation. When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, § 1026.17(c)(6)(ii) and comment 17(c)(6)–2 permit creditors to treat the construction phase and the permanent phase as either one transaction, with one combined disclosure, or more than one transaction, with a separate disclosure for each transaction. Comment 17(c)(6)–6 explains that a loan to finance the construction of a dwelling meets the condition that it "may be permanently financed by the same creditor" if the creditor generally makes both construction and permanent financing available to qualifying consumers, unless the consumer expressly states that the consumer will not obtain permanent financing from the creditor. Therefore, a creditor that generally makes both construction and permanent financing available, upon receiving a consumer's application for either construction financing only without the consumer expressly stating that the consumer will not obtain permanent financing from the creditor or combined construction-permanent financing, complies with § 1026.19(e)(1)(iii) by delivering or placing in the mail the disclosures required by § 1026.19(e)(1)(i) for both the construction financing and the permanent financing, disclosed as either one or more than one transaction, not later than the third business day after the creditor receives the application and not later than the seventh business day before consummation. To illustrate:

i. Assume a creditor receives a consumer's application for construction financing only on Monday, June 1. Assume further that the creditor generally makes both construction and permanent financing available to qualifying consumers and that the consumer does not expressly state that the consumer will not obtain permanent financing from the creditor. In these circumstances, the construction loan that the consumer applied for is a loan to finance construction of a dwelling that may be permanently financed by the same creditor under comment 17(c)(6)–6. The creditor therefore must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for both the construction financing and the permanent financing, either disclosed as one or more than one transaction, not later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction, even though the application is for construction financing only.

ii. Assume a creditor receives a consumer's application for construction financing only on Monday, June 1. Assume further that the creditor generally makes only construction financing available to qualifying consumers. In these circumstances, the construction loan for which the consumer applied is not a loan to finance construction of a dwelling that may be permanently financed by the same creditor under comment 17(c)(6)–6. The creditor therefore must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for the construction financing only not later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction.

iii. Assume a creditor receives a consumer's application for construction financing only on Monday, June 1. Assume further that the creditor generally makes both construction and permanent financing available to qualifying consumers and that the consumer expressly states that the consumer will not obtain permanent financing from the creditor. In these circumstances, the construction loan for which the consumer applied is not a loan to finance construction of a dwelling that may be permanently financed by the same creditor under comment 17(c)(6)–6. The creditor therefore must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for the construction financing only not later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction.

iv. Assume the same facts as in comment 19(e)(1)(iii)–5.i, under which the creditor provides the disclosures required by § 1026.19(e)(1)(i) for both construction financing and permanent financing. If the creditor generally conducts separate closings for the construction financing and the permanent financing or expects that the construction financing and the permanent financing may have separate closings, providing separate Loan Estimates for the construction financing and for the permanent financing allows the creditor to deliver separate Closing Disclosures for the separate phases. For example, assume further that the consumer has requested permanent financing after receiving separate Loan Estimates for the construction financing and for the permanent financing, that consummation of the construction financing is scheduled for July 1, and that consummation of the permanent financing is scheduled on or about June 1 of the following year. The creditor may provide the construction financing Closing Disclosure at least three business days before consummation of that transaction on July 1 and delay providing the permanent financing Closing Disclosure until three business days before consummation of that transaction on or about June 1 of the following year, in accordance with § 1026.19(f)(1)(ii). The creditor may also issue a revised Loan Estimate for the permanent financing at any time prior to 60 days before consummation, following the procedures under § 1026.19(e)(3)(iv)(F).

v. If a consumer expressly states that the consumer will not obtain permanent financing from the creditor after a combined construction-permanent financing disclosure already has been provided, the creditor complies with § 1026.17(c)(6)(ii) by issuing a revised disclosure for construction financing only in accordance with the timing requirements of § 1026.19(e)(4).

* * * * *

19(e)(1)(vi) Shopping for settlement service providers.

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2. *Disclosure of services for which the consumer may shop.* Section 1026.19(e)(1)(vi)(B) requires the creditor to identify the services for which the consumer is permitted to shop in the disclosures provided under § 1026.19(e)(1)(i). If the charge for a particular service for which the consumer is permitted to shop is payable by the consumer, the creditor must specifically identify that service unless, based on the best information reasonably available to the creditor when the disclosure is provided, the creditor knows that the service is provided as part of a package (or combination of settlement services) offered by a single service provider. Specific identification of each service in such a package is not required provided all such services are services for which the consumer is permitted to shop. See § 1026.37(f)(3) regarding the content and format for disclosure of services for which the consumer may shop.

3. *Written list of providers.* If the creditor permits the consumer to shop for a settlement service, § 1026.19(e)(1)(vi)(C) requires the creditor to provide the consumer with a written list identifying at least one available provider of that service and stating that the consumer may choose a different provider for that service. The settlement service providers identified on the written list required by § 1026.19(e)(1)(vi)(C) must correspond to the settlement services for which the consumer may shop, disclosed under § 1026.37(f)(3). See form H–27 in appendix H to this part for a model list. Although use of the model form H–27 in appendix H to this part is not required, creditors using it properly will be deemed to be in compliance with § 1026.19(e)(1)(vi)(C).

4. *Identification of available providers.* Section 1026.19(e)(1)(vi)(C) provides that the creditor must identify settlement service providers that are available to the consumer. A creditor does not comply with the identification requirement in § 1026.19(e)(1)(vi)(C) unless it provides sufficient information to allow the consumer to contact the provider, such as the name under which the provider does business and the provider's address and telephone number. Similarly, a creditor does not comply with the availability requirement in § 1026.19(e)(1)(vi)(C) if it provides a written list consisting of only settlement service providers that are no longer in business or that do not provide services where the consumer or property is located. If the charge for a particular service for which the consumer is permitted to shop is payable by the consumer, the creditor must specifically identify that service and an available provider of that service on the written list of providers unless, based on the best information reasonably available to the creditor at the time the disclosure is provided, the creditor knows that the service is provided as part of a package (or combination of settlement services) offered by a single service provider. Specific identification of each service in such a package is not required provided they all are services for which the consumer is permitted to shop.

* * * * *

19(e)(3) Good faith determination for estimates of closing costs.

19(e)(3)(i) General rule.

1. *Requirement.* Section 1026.19(e)(3)(i) provides the general rule that an estimated closing cost disclosed under § 1026.19(e) is not in good faith if the charge paid by or imposed on the consumer exceeds the amount originally disclosed under § 1026.19(e)(1)(i). Although § 1026.19(e)(3)(ii) and (iii) provide exceptions to the general rule, the charges that are generally subject to § 1026.19(e)(3)(i) include, but are not limited to, the following:

i. Fees paid to the creditor.

ii. Fees paid to a mortgage broker.

iii. Fees paid to an affiliate of the creditor or a mortgage broker.

iv. Fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop for a third party service provider for a settlement service.

v. Transfer taxes.

* * * * *

8. *"Paid by or imposed on" and "payable."* The term "paid by or imposed on," as used in §§ 1026.19(e)(3)(i) and 1026.19(e)(3)(ii)(A), has the same meaning as the term "payable," as used elsewhere in this part.

19(e)(3)(ii) Limited increases permitted for certain charges.

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2. *Aggregate increase limited to ten percent.* Under § 1026.19(e)(3)(ii)(A), whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to § 1026.19(e)(3)(ii) increases by more than 10 percent, regardless of whether a particular charge increases by more than 10 percent. This is true even if an individual charge was omitted from the estimates entirely and then imposed at consummation. In all cases, however, the creditor must also comply with the requirements in § 1026.19(e)(3)(ii)(B) and (C) to satisfy the good faith standard under § 1026.19(e)(3)(ii). If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C), good faith is determined under § 1026.19(e)(3)(i) instead of § 1026.19(e)(3)(ii) or (iii) regardless of the provider selected by the consumer. The following examples illustrate this principle (and also assume the requirements in § 1026.19(e)(3)(ii)(B) and (C) are satisfied):

i. Assume that, in the disclosures provided under § 1026.19(e)(1)(i), the creditor includes a $300 estimated fee for a settlement agent, the settlement agent fee is included in the category of charges subject to § 1026.19(e)(3)(ii), and the sum of all charges subject to § 1026.19(e)(3)(ii) (including the settlement agent fee) equals $1,000. In this case, the creditor does not violate § 1026.19(e)(3)(ii) if the actual settlement agent fee exceeds the estimated settlement agent fee by more than 10 percent (*i.e.,* the fee exceeds $330), provided that the sum of all such actual charges does not exceed the sum of all such estimated charges by more than 10 percent (*i.e.,* the sum of all such charges does not exceed $1,100).

ii. Assume that, in the disclosures provided under § 1026.19(e)(1)(i), the sum of all estimated charges subject to § 1026.19(e)(3)(ii) equals $1,000. If the creditor does not include an estimated charge for a notary fee but a $10 notary fee is charged to the consumer, and the notary fee is subject to § 1026.19(e)(3)(ii), then the creditor does not violate § 1026.19(e)(1)(i) if the sum of all amounts charged to the consumer subject to § 1026.19(e)(3)(ii) does not exceed $1,100, even though an individual notary fee was not included in the estimated disclosures provided under § 1026.19(e)(1)(i).

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19(e)(3)(iii) Variations permitted for certain charges.

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2. *Good faith requirement for required services chosen by the consumer.* If a service is required by the creditor, the creditor permits the consumer to shop for that service consistent with § 1026.19(e)(1)(vi)(A), the creditor provides the list required by § 1026.19(e)(1)(vi)(C), and the consumer chooses a service provider that is not on that list to perform that service, then the actual amounts of such fees need not be compared to the original estimates for such fees to perform the good faith analysis required by § 1026.19(e)(3)(i) or (ii). Differences between the amounts of such charges disclosed under § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the consumer informs the creditor that the consumer will choose a settlement agent not identified by the creditor on the written list provided under § 1026.19(e)(1)(vi)(C), and the creditor subsequently discloses an unreasonably low estimated settlement agent fee, then the under-disclosure does not comply with § 1026.19(e)(3)(iii) and good faith is determined under § 1026.19(e)(3)(i). If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C), good faith is determined under § 1026.19(e)(3)(i) instead of § 1026.19(e)(3)(iii) regardless of the provider selected by the consumer.

3. *Good faith requirement for property taxes or non-required services chosen by the consumer.* Differences between the amounts of estimated charges for property taxes or services not required by the creditor disclosed under § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated

charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the consumer informs the creditor that the consumer will obtain a type of inspection not required by the creditor, the creditor must include the charge for that item in the disclosures provided under § 1026.19(e)(1)(i), but the actual amount of the inspection fee need not be compared to the original estimate for the inspection fee to perform the good faith analysis required by § 1026.19(e)(3)(iii). The original estimated charge, or lack of an estimated charge for a particular service, complies with § 1026.19(e)(3)(iii) if it is made based on the best information reasonably available to the creditor at the time that the estimate was provided. But, for example, if the subject property is located in a jurisdiction where consumers are customarily represented at closing by their own attorney, even though it is not a requirement, and the creditor fails to include a fee for the consumer's attorney, or includes an unreasonably low estimate for such fee, on the original estimates provided under § 1026.19(e)(1)(i), then the creditor's failure to disclose, or unreasonably low estimation, does not comply with § 1026.19(e)(3)(iii). Similarly, the amount disclosed for property taxes must be based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the creditor fails to include a charge for property taxes, or includes an unreasonably low estimate for that charge, on the original estimates provided under § 1026.19(e)(1)(i), then the creditor's failure to disclose, or unreasonably low estimation, does not comply with § 1026.19(e)(3)(iii).

4. *Bona fide charges.* In covered transactions, § 1026.19(e)(1)(i) requires the creditor to provide the consumer with good faith estimates of the disclosures in § 1026.37. Section 1026.19(e)(3)(iii) provides that an estimate of the charges listed in § 1026.19(e)(3)(iii) is in good faith if it is consistent with the best information reasonably available to the creditor at the time the disclosure is provided and that good faith is determined under § 1026.19(e)(3)(iii) even if such charges are paid to affiliates of the creditor, so long as the charges are bona fide. To be bona fide, charges must be lawful and for services that are actually performed.

19(e)(3)(iv) Revised estimates.

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2. *Actual increase.* A creditor may determine good faith under § 1026.19(e)(3)(i) and (ii) based on the increased charges reflected on revised disclosures only to the extent that the reason for revision, as identified in § 1026.19(e)(3)(iv)(A) through (F), actually increased the particular charge. For example, if a consumer requests a rate lock extension, then the revised disclosures on which a creditor relies for purposes of determining good faith under § 1026.19(e)(3)(i) may reflect a new rate lock extension fee, but the fee may be no more than the rate lock extension fee charged by the creditor in its usual course of business, and the creditor may not rely on changes to other charges unrelated to the rate lock extension for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii).

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4. *Revised disclosures for general informational purposes.* Section 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures for informational purposes, *e.g.,* to keep the consumer apprised of updated information, even if the revised disclosures may not be used for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii). *See* comment 19(e)(3)(iv)(A)–1.ii for an example in which the creditor issues revised disclosures even though the sum of all costs subject to the 10 percent tolerance category has not increased by more than 10 percent.

5. *Best information reasonably available.* Regardless of whether a creditor may use particular disclosures for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), except as otherwise provided in § 1026.19(e), any disclosures must be based on the best information reasonably available to the creditor at the time they are provided to the consumer. *See* § 1026.17(c)(2)(i) and comment 17(c)(2)(i)–1. For example, if the creditor issues revised disclosures reflecting a new rate lock extension fee for purposes of determining good faith under § 1026.19(e)(3)(i), other charges unrelated to the rate lock extension should be reflected on the revised disclosures based on the best information reasonably available to the creditor at the time the revised disclosures are provided. Nonetheless, any increases in those other charges unrelated to the lock extension may not be used for the purposes of determining good faith under § 1026.19(e)(3).

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19(e)(3)(iv)(D) Interest rate dependent charges.

1. *Requirements.* If the interest rate is not locked when the disclosures required by § 1026.19(e)(1)(i) are provided, then, no later than three business days after the date the interest rate is subsequently locked, § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed under § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. The following example illustrates this requirement:

i. Assume a creditor sets the interest rate by executing a rate lock agreement with the consumer. If such an agreement exists when the original disclosures required under § 1026.19(e)(1)(i) are provided, then the actual points and lender credits are compared to the estimated points disclosed under § 1026.37(f)(1) and lender credits included in the original disclosures provided under § 1026.19(e)(1)(i) for the purpose of determining good faith under § 1026.19(e)(3)(i). If the consumer enters into a rate lock agreement with the creditor after the disclosures required under § 1026.19(e)(1)(i) were provided, then § 1026.19(e)(3)(iv)(D) requires the creditor to provide, no later than three business days after the date that the consumer and the creditor enter into a rate lock agreement, a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed under § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. Provided that the revised version of the disclosures required under § 1026.19(e)(1)(i) reflect any revised points disclosed under § 1026.37(f)(1) and lender credits, the actual points and lender credits are compared to the revised points and lender credits for the purpose of determining good faith under § 1026.19(e)(3)(i).

2. *After the Closing Disclosure is provided.* Under § 1026.19(e)(3)(iv)(D), no later than three business days after the date the interest rate is locked, the creditor must provide a revised version of the Loan Estimate as required by § 1026.19(e)(1)(i) to the consumer. Section 1026.19(e)(4)(ii) prohibits a creditor from providing a revised version of the Loan Estimate as required by § 1026.19(e)(1)(i) on or after the date on which the creditor provides the Closing Disclosure as required by § 1026.19(f)(1)(i). If the interest rate is locked on or after the date on which the creditor provides the Closing Disclosure and the Closing Disclosure is inaccurate as a result, then the creditor must provide the consumer a corrected Closing Disclosure, at or before consummation, reflecting any changed terms. If the rate lock causes the Closing Disclosure to become inaccurate before consummation in a manner listed in § 1026.19(f)(2)(ii), the creditor must ensure that the consumer receives a corrected Closing Disclosure no later than three days before consummation, as provided in that paragraph.

19(e)(3)(iv)(E) Expiration.

1. *Requirements.* If the consumer indicates an intent to proceed with the transaction more than 10 business days after the disclosures were originally provided under § 1026.19(e)(1)(iii), for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i). Section 1026.19(e)(3)(iv)(E) requires no justification for the change to the original estimate other than the lapse of 10 business days. For example, assume a creditor includes a $500 underwriting fee on the disclosures provided under § 1026.19(e)(1)(i) and the creditor delivers those disclosures on a Monday. If the consumer indicates intent to proceed 11 business days later, the creditor may provide new disclosures with a $700 underwriting fee. In this example, § 1026.19(e) and § 1026.25 require the creditor to document that a new disclosure was provided under § 1026.19(e)(3)(iv)(E) but do not require the creditor to document a reason for the increase in the underwriting fee.

2. *Longer time period.* For transactions in which the interest rate is locked for a specific period of time, § 1026.37(a)(13)(ii) requires the creditor to provide the date and time (including the applicable time zone) when that period ends. If the creditor establishes a period greater than 10 business days after the disclosures were originally provided (or subsequently extends it to such a longer period) before the estimated closing costs expire, notwithstanding the 10-business-day

period discussed in comment 19(e)(3)(iv)(E)–1, that longer time period becomes the relevant time period for purposes of § 1026.19(e)(3)(iv)(E). Accordingly, in such a case, the creditor may not issue revised disclosures for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii) under § 1026.19(e)(3)(iv)(E) until after the longer time period has expired. A creditor establishes such a period greater than 10 business days by communicating the greater time period to the consumer, including through oral communication.

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19(e)(4) Provision and receipt of revised disclosures.

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19(e)(4)(ii) Relationship to disclosures required under § 1026.19(f).

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2. *Corrected disclosures provided under § 1026.19(f)(2)(i) or (2)(ii).* If there are fewer than four business days between the time the revised version of the disclosures is required to be provided under § 1026.19(e)(4)(i) and consummation or the Closing Disclosure required by § 1026.19(f)(1) has already been provided to the consumer, creditors comply with the requirements of § 1026.19(e)(4) (to provide a revised estimate under § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii)) if the revised disclosures are reflected in the corrected disclosures provided under § 1026.19(f)(2)(i) or (2)(ii), subject to the other requirements of § 1026.19(e)(4)(i).

19(f) Mortgage loans—Final disclosures.

19(f)(1) Provision of disclosures.

19(f)(1)(i) Scope.

1. *Requirements.* Section 1026.19(f)(1)(i) requires disclosure of the actual terms of the credit transaction, and the actual costs associated with the settlement of that transaction, for closed-end credit transactions that are secured by real property or a cooperative unit, other than reverse mortgages subject to § 1026.33. For example, if the creditor requires the consumer to pay money into a reserve account for the future payment of taxes, the creditor must disclose to the consumer the exact amount that the consumer is required to pay into the reserve account. If the disclosures provided under § 1026.19(f)(1)(i) do not contain the actual terms of the transaction, the creditor does not violate § 1026.19(f)(1)(i) if the creditor provides corrected disclosures that contain the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements in § 1026.19(f)(1)(ii) and (f)(2). For example, if the creditor provides the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, but the consumer adds a mobile notary service to the terms of the transaction on Tuesday, June 2, the creditor complies with § 1026.19(f)(1)(i) if it provides disclosures reflecting the revised terms of the transaction on or after Tuesday, June 2, assuming that the corrected disclosures are also provided at or before consummation, under § 1026.19(f)(2)(i).

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19(f)(2) Subsequent changes.

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19(f)(2)(iii) Changes due to events occurring after consummation.

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2. *Per-diem interest.* Under § 1026.19(f)(2)(iii), if during, the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under § 1026.19(f)(1)(i), the creditor must provide the consumer corrected disclosures. Under § 1026.17(c)(2)(ii), for a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest is considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction. A creditor is not required to provide to the consumer corrected disclosures under § 1026.19(f)(2)(iii) for any disclosure affected by the per-diem interest that is considered accurate under § 1026.17(c)(2)(ii), even if the amount actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o). See also comment 17(c)(2)(ii)–1.

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19(f)(2)(v) Refunds related to the good faith analysis.

1. *Requirements.* Section 1026.19(f)(2)(v) provides that, if amounts paid at consummation exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. For example, assume that at consummation the consumer must pay four itemized charges that are subject to the good faith determination under § 1026.19(e)(3)(i). If the actual amounts paid by the consumer for the four itemized charges subject to § 1026.19(e)(3)(i) exceed their respective estimates on the disclosures required under § 1026.19(e)(1)(i) by $30, $25, $25, and $15, then the total would exceed the limitations prescribed by § 1026.19(e)(3)(i) by $95. If, further, the amounts paid by the consumer for services that are subject to the good faith determination under § 1026.19(e)(3)(ii) totaled $1,190, but the respective estimates on the disclosures required under § 1026.19(e)(1)(i) totaled only $1,000, then the total would exceed the limitations prescribed by § 1026.19(e)(3)(ii) by $90. The creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds $185 to the consumer no later than 60 days after consummation. The creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail corrected disclosures reflecting the $185 refund of the excess amount collected no later than 60 days after consummation. See comments 38–4 and 38(h)(3)–2 for additional guidance on disclosing refunds.

19(f)(3) Charges disclosed.

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19(f)(3)(ii) Average charge.

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3. *Uniform use.* If a creditor chooses to use an average charge for a settlement service for a particular loan within a class, § 1026.19(f)(3)(ii)(C) requires the creditor to use that average charge for that service on all loans within the class. For example:

i. Assume a creditor elects to use an average charge for appraisal fees. The creditor defines a class of transactions as all fixed rate loans originated between January 1 and April 30 secured by real property or a cooperative unit located within a particular metropolitan statistical area. The creditor must then charge the average appraisal charge to all consumers obtaining fixed rate loans originated between May 1 and August 30 secured by real property or a cooperative unit located within the same metropolitan statistical area.

ii. The example in paragraph i of this comment assumes that a consumer would not be required to pay the average appraisal charge unless an appraisal was required on that particular loan. Using the example above, if a consumer applies for a loan within the defined class, but already has an appraisal report acceptable to the creditor from a prior loan application, the creditor may not charge the consumer the average appraisal fee because an acceptable appraisal report has already been obtained for the consumer's application. Similarly, although the creditor defined the class broadly to include all fixed rate loans, the creditor may not require the consumer to pay the average appraisal charge if the particular fixed rate loan program the consumer applied for does not require an appraisal.

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19(f)(4) Transactions involving a seller.

19(f)(4)(i) Provision to seller.

1. *Requirement.* Section 1026.19(f)(4)(i) requires the settlement agent to provide the seller with the disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction. The settlement agent complies with this provision by providing a copy of the Closing Disclosure provided to the consumer, if the Closing Disclosure also contains the information under § 1026.38 relating to the seller's transaction or, alternatively, by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.

2. *Simultaneous loans for subordinate financing.* In a purchase transaction with a simultaneous loan for subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the Closing Disclosure on the first-lien transaction if that Closing Disclosure records the entirety of the seller's transaction. If the first-lien Closing Disclosure does not record the entirety of the seller's transaction, the Closing Disclosure for the simultaneous loan for subordinate financing must be provided to the seller and reflect the seller's transaction as applicable to the subordinate

financing. In this case, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with a copy of the Closing Disclosure for both the first lien and the simultaneous loan for subordinate financing, if they also contain the information under § 1026.38 relating to the seller's transaction, or by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.

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Section 1026.23—Right of Rescission

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23(g) Tolerances for Accuracy.

1. *Example.* See comment 38(o)–1 for examples illustrating the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

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23(h) Special Rules for Foreclosures.

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23(h)(2) Tolerance for Disclosures.

1. *General.* This section is based on the accuracy of the total finance charge rather than its component charges. For each transaction subject to § 1026.19(e) and (f), this section is also based on the accuracy of the total of payments, taken as a whole, rather than its components.

2. *Example.* See comment 38(o)–1 for examples illustrating the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

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Section 1026.25—Record Retention

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25(c) Records Related to Certain Requirements for Mortgage Loans.

25(c)(1) Records related to requirements for loans secured by real property or a cooperative unit.

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Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

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37(a) General information.

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37(a)(7) Sale price.

1. *Estimated property value.* In transactions where there is no seller, such as in a refinancing, § 1026.37(a)(7)(ii) requires the creditor to disclose the estimated value of the property identified in § 1026.37(a)(6) at the time the disclosure is issued to the consumer. The creditor may use the estimate provided by the consumer at application unless it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, in which case it must use its own estimate. If the creditor has obtained any appraisals or valuations of the property for the application at the time the disclosure is issued to the consumer, the value determined by the appraisal or valuation to be used during underwriting for the application is disclosed as the estimated property value. If the creditor has obtained multiple appraisals or valuations and has not yet determined which one will be used during underwriting, it may disclose the value from any appraisal or valuation it reasonably believes it may use in underwriting the transaction. In a transaction that involves a seller, if the sale price is not yet known, the creditor complies with § 1026.37(a)(7) if it discloses the estimated value of the property that it used as the basis for the disclosures in the Loan Estimate.

2. *Personal property.* In transactions involving personal property that is separately valued from real property, only the value of the real property or cooperative unit is disclosed under § 1026.37(a)(7). Where personal property is included in the sale price of the real property or cooperative unit (for example, if the consumer is purchasing the furniture inside the dwelling), however, § 1026.37(a)(7) permits disclosure of the aggregate price without any reduction for the appraised or estimated value of the personal property.

37(a)(8) Loan term.

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3. *Loan term start date.* See comment app. D–7.i for an explanation of how a creditor discloses the loan term of a multiple-advance loan to finance the construction of a dwelling that may be permanently financed by the same creditor.

37(a)(9) Purpose.

1. *General.* Section 1026.37(a)(9) requires disclosure of the consumer's intended use of the credit. In ascertaining the consumer's intended use, § 1026.37(a)(9) requires the creditor to consider all relevant information known to the creditor at the time of the disclosure. If the purpose is not known, the creditor may rely on the consumer's stated purpose. The following examples illustrate when each of the permissible purposes should be disclosed:

i. *Purchase.* The consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit. In a purchase transaction with a simultaneous loan for subordinate financing, the simultaneous loan is also disclosed with the purpose "Purchase."

ii. *Refinance.* The consumer refinances an existing obligation already secured by the consumer's dwelling to change the rate, term, or other loan features and may or may not receive cash from the transaction. For example, in a refinance with no cash provided, the new amount financed does not exceed the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. Conversely, in a refinance with cash provided, the consumer refinances an existing mortgage obligation and receives money from the transaction that is in addition to the funds used to pay the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. In such a transaction, the consumer may, for example, use the newly-extended credit to pay off the balance of the existing mortgage and other consumer debt, such as a credit card balance.

iii. *Construction.* Section 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for construction in transactions where the creditor extends credit to finance only the cost of initial construction (construction-only loan), not renovations to existing dwellings, and in transactions where a multiple advance loan may be permanently financed by the same creditor (construction-permanent loan). In a construction-only loan, the borrower may be required to make interest only payments during the loan term with the balance commonly due at the end of the construction project. For additional guidance on disclosing construction-permanent loans, see § 1026.17(c)(6)(ii), comments 17(c)(6)–2 and –3, and appendix D to this part.

iv. *Home equity loan.* The creditor is required to disclose that the credit is for a "home equity loan" if the creditor intends to extend credit for any purpose other than a purchase, refinancing, or construction. This disclosure applies whether the loan is secured by a first or subordinate lien.

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37(a)(10) Product.

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2. *Additional features.* When disclosing a loan product with at least one of the features described in § 1026.37(a)(10)(ii), § 1026.37(a)(10)(iii) and (iv) requires the disclosure of only the first applicable feature in the order of § 1026.37(a)(10)(ii) and that it be preceded by the time period or the length of the introductory period and the frequency of the first adjustment period, as applicable, followed by a description of the loan product and its time period as provided for in § 1026.37(a)(10)(i). For example:

i. *Negative amortization.* Some loan products, such as "payment option" loans, permit the borrower to make payments that are insufficient to cover all of the interest accrued, and the unpaid interest is added to the principal balance. Where the loan product includes a loan feature that may cause the loan balance to increase, the disclosure required by § 1026.37(a)(10)(ii)(A) is preceded by the time period that the borrower is permitted to make payments that result in negative amortization (*e.g.,* "2 Year Negative Amortization"), followed by the loan product type. Thus, a fixed rate product with a step-payment feature for the first two years of the legal obligation that may negatively amortize is disclosed as "2 Year Negative Amortization, Fixed Rate."

ii. *Interest only.* When disclosing an "Interest Only" feature, as defined in § 1026.18(s)(7)(iv), the applicable time period must precede the label "Interest Only." Thus, a fixed rate loan with only interest due for the first five years of the loan term is disclosed as "5 Year Interest Only, Fixed Rate." If the interest only feature fails to cover the total interest due, then, as required by § 1026.37(a)(10)(iii), the disclosure must reference the negative amortization feature and not the interest only feature (*e.g.,* "5 Year Negative Amortization, Fixed Rate"). See comment app. D–7.ii for an explanation of the disclosure of the time period of an interest only feature for a construction loan or a construction-permanent loan.

iii. *Step payment.* When disclosing a step payment feature (which is sometimes referred to instead as a graduated payment), the period of time at the end of which the scheduled payments will change must precede the label "Step Payment" (*e.g.,* "5 Year Step Payment") followed by the name of the loan product. Thus, a fixed rate mortgage subject to a 5-year step payment plan is disclosed as a ''5 Year Step Payment, Fixed Rate.''

iv. *Balloon payment.* If a loan product includes a ''balloon payment,'' as that term is defined in § 1026.37(b)(5), the disclosure of the balloon payment feature, including the year the payment is due, precedes the disclosure of the loan product. Thus, if the loan product is a step rate with an introductory rate that lasts for three years and adjusts each year thereafter until the balloon payment is due in the seventh year of the loan term, the disclosure required is ''Year 7 Balloon Payment, 3/1 Step Rate.'' If the loan product includes more than one balloon payment, only the earliest year that a balloon payment is due shall be disclosed.

v. *Seasonal payment.* If a loan product includes a seasonal payment feature, § 1026.37(a)(10)(ii)(E) requires that the creditor disclose the feature. The feature is not, however, required to be disclosed with any preceding time period. Disclosure of the label ''Seasonal Payment'' without any preceding number of years satisfies this requirement.

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37(a)(13) Rate lock.

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2. *Expiration date.* The disclosure required by § 1026.37(a)(13)(ii) related to estimated closing costs is required regardless of whether the interest rate is locked for a specific period of time or whether the terms and costs are otherwise accepted or extended. If the consumer fails to indicate an intent to proceed with the transaction within 10 business days after the disclosures were originally provided under § 1026.19(e)(1)(iii) (or within any longer time period established by the creditor), then for determining good faith under § 1026.19(e)(3)(i) and (ii) a creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i). *See* comment 19(e)(3)(iv)(E)–2.

* * * * *

4. *Revised Disclosures.* Once the consumer indicates an intent to proceed within the time specified by the creditor under § 1026.37(a)(13)(ii), the date and time at which estimated closing costs expire are left blank on subsequent revised disclosures, if any. The creditor may extend the period of availability to expire beyond the time disclosed under § 1026.37(a)(13)(ii). If the consumer indicates an intent to proceed within that longer time period, the date and time at which estimated closing costs expire are left blank on subsequent revised disclosures, if any. *See* comment 19(e)(3)(iv)–5.

37(b) Loan terms.

* * * * *

37(b)(2) Interest rate.

1. *Interest rate at consummation not known.* Where the interest rate that will apply at consummation is not known at the time the creditor must deliver the disclosures required by § 1026.19(e), § 1026.37(b)(2) requires disclosure of the fully-indexed rate, defined as the index plus the margin at consummation. Although § 1026.37(b)(2) refers to the index plus margin ''at consummation,'' if the index value that will be in effect at consummation is unknown at the time the disclosures are provided under § 1026.19(e)(1)(iii), *i.e.,* within three business days after receipt of a consumer's application, the fully-indexed rate disclosed under § 1026.37(b)(2) may be based on the index in effect at the time the disclosure is delivered. The index in effect at consummation (or the time the disclosure is delivered under § 1026.19(e)) need not be used if the contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 days before consummation (or any earlier date of disclosure) in calculating the fully-indexed rate to be disclosed. See comment app. D–7.iii for an explanation of the disclosure of the permanent financing interest rate for a construction-permanent loan.

37(b)(3) Principal and interest payment.

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2. *Initial periodic payment if not known.* Under § 1026.37(b)(3), the initial periodic payment amount that will be due under the terms of the legal obligation must be disclosed. If the initial periodic payment is not known because it will be based on an interest rate at consummation that is not known at the time the disclosures required by § 1026.19(e) must be provided, for example, if it is based on an external index that may fluctuate before consummation, § 1026.37(b)(3) requires that the disclosure be based on the fully-indexed rate disclosed under § 1026.37(b)(2). See comment 37(b)(2)–1 for guidance regarding calculating the fully-indexed rate. See comment app. D–7.iv for an explanation of the disclosure of the initial periodic payment for a construction or construction-permanent loan.

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37(b)(6) Adjustments after consummation.

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37(b)(6)(iii) Increase in periodic payment.

1. *Additional information regarding increase in periodic payment.* A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the scheduled frequency of adjustments to the periodic principal and interest payment by using the phrases ''Adjusts every'' and ''starting in.'' A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment by using the phrase ''Can go as high as'' and then indicating the date at the end of that phrase or, for a scheduled maximum amount, such as under a step payment loan, ''Goes as high as.'' A creditor complies with the requirement under § 1026.37(b)(6)(iii) to indicate that there is a period during which only interest is required to be paid and the due date of the last periodic payment of such period using the phrase ''Includes only interest and no principal until.'' See form H–24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3). See comment app. D–7.v for an explanation of the disclosure of an increase in the periodic payment for a construction or construction-permanent loan.

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37(c) Projected payments.

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2. *Construction loans.* See comment app. D–7.vi for an explanation of the projected payments disclosure for a construction or construction-permanent loan.

37(c)(1) Periodic payment or range of payments.

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Paragraph 37(c)(1)(iii).

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Paragraph 37(c)(1)(iii)(B).

1. *Multiple events occurring in a single year.* If changes to periodic principal and interest payments would result in more than one separate periodic payment or range of payments in a single year, § 1026.37(c)(1)(iii)(B) requires the creditor to disclose the range of payments that would apply during the year in which the events occur. For example:

i. Assume a loan with a 30-year term with a payment that adjusts every month for the first 12 months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment and the periodic payment that would apply after each payment adjustment during the first 12 months, which single range represents the minimum payment and maximum payment, respectively. Under § 1026.37(c)(1)(i)(D), the creditor also discloses, as an additional separate periodic payment or range of payments, the periodic principal and interest payment or range of payments that would apply after the payment becomes fixed.

ii. Assume instead a loan with a 30-year term with a payment that adjusts upward at three months and at six months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment, the periodic payment that would apply after the payment adjustment that occurs at three months, and the periodic payment that would apply after the payment adjustment that occurs at six months, which single range represents the minimum payment and maximum payment, respectively, which would apply during the first year of the loan. Under § 1026.37(c)(1)(i)(D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply on the first anniversary of the due date of the initial periodic payment or range of payments, because that is the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the first year of the loan.

iii. Assume that the same loan has a payment that, instead of becoming fixed after the adjustment at six months, adjusts once more at 18 months and becomes fixed thereafter. The creditor discloses the same single range of payments for year one. Under § 1026.37(c)(1)(i)(D), the creditor separately discloses the principal and interest payment that would apply on the first anniversary of the due date of the initial periodic payment in year two. Under § 1026.37(c)(1)(i)(A), the creditor also separately discloses the periodic payment that would apply after the payment adjustment that occurs at 18 months. See comment 37(c)(3)(ii)–1 regarding subheadings that state the years.

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37(c)(4) Taxes, insurance, and assessments.

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Paragraph 37(c)(4)(iv).

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2. *Amounts paid by the creditor using escrow account funds.* Section 1026.37(c)(4)(iv) requires the creditor to disclose an indication of whether the amounts disclosed under § 1026.37(c)(4)(ii) will be paid by the creditor using escrow account funds. If only a portion of the amounts disclosed under § 1026.37(c)(4)(ii), including, without limitation, property taxes, homeowner's insurance, and assessments, will be paid by the creditor using escrow account funds, the creditor may indicate that only a portion of the amounts disclosed will be paid using escrow account funds, such as by using the word "some."

37(d) Costs at closing.

37(d)(2) Optional alternative table for transactions without a seller and simultaneous loans for subordinate financing.

1. *Optional use.* The optional alternative disclosure of the estimated cash to close provided for in § 1026.37(d)(2) may be used by a creditor only in a transaction without a seller or for simultaneous loans for subordinate financing. In a purchase transaction the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate only if the first-lien Closing Disclosure will record the entirety of the seller's transaction. Creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under § 1026.37(h)(2).

* * * * *

37(f) Closing cost details; loan costs.

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3. *Construction loan inspection and handling fees.* Inspection and handling fees for the staged disbursement of construction loan proceeds are loan costs associated with the transaction for purposes of § 1026.37(f). If such fees are collected at or before consummation, they are disclosed in the loan costs table. If such fees will be collected after consummation, they are disclosed in a separate addendum and are not counted for purposes of the calculating cash to close table. See comment 37(f)(6)–3 for an explanation of an addendum used to disclose inspection and handling fees that will be collected after consummation. *See also* comments 38(f)–2 and app. D–7.viii. If the number of inspections and disbursements is not known at the time the disclosures are provided, the creditor discloses the fees that will be collected based on the best information reasonably available to the creditor at the time the disclosure is provided. *See* comment 19(e)(1)(i)–1. See § 1026.17(e) and its commentary for an explanation of the effect of subsequent events that cause inaccuracies in disclosures.

* * * * *

37(f)(6) Use of addenda.

* * * * *

3. *Addendum for post-consummation inspection and handling fees.* A creditor makes the disclosures required by § 1026.37(f) and comment 37(f)–3 of post-consummation charges for construction loan inspection and handling fees by disclosing the total of such fees under the heading "Inspection and Handling Fees Collected After Closing" in an addendum. If the amount of such fees is not known at the time the disclosures are provided, the disclosures in the addendum are based upon the best information reasonably available to the creditor at the time the disclosure is provided. *See* comment 19(e)(1)(i)–1. For example, such information could include amounts the creditor has previously charged in similar transactions.

37(g) Closing cost details; other costs.

* * * * *

37(g)(4) Other.

* * * * *

4. *Examples.* Examples of other items that are disclosed under § 1026.37(g)(4) if the creditor is aware of those items when it issues the Loan Estimate include commissions of real estate brokers or agents, additional payments to the seller to purchase personal property under the real estate purchase and sale contract, homeowner's association and condominium charges associated with the transfer of ownership, and fees for inspections not required by the creditor but paid by the consumer under the real estate purchase and sale contract. The creditor must also disclose the following amounts under § 1026.37(g)(4) unless the optional alternative calculating cash to close table for transactions without a seller and simultaneous loans for subordinate financing is used and such amounts are disclosed under § 1026.37(h)(2)(iii) on that table: construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.37(a)(6), and payoff of unsecured debt. These costs are disclosed under § 1026.37(g) rather than § 1026.37(f) even when they are payable directly or indirectly to the creditor. For example, if a builder is also the creditor, the bona fide cost of construction is disclosed under § 1026.37(g)(4) and not § 1026.37(f). See comment 19(e)(3)(iii)–3 for a discussion of the good faith requirement for these services chosen by the consumer that are not required by the creditor. See also comment app. D–7.vii for an explanation of the disclosure of construction costs for a construction or construction-permanent loan and comment app. D–7.viii for an explanation of the disclosure of construction loan inspection and handling fees.

37(g)(6) Total closing costs.

Paragraph 37(g)(6)(ii).

1. *Lender credits.* Section 1026.19(e)(1)(i) requires disclosure of lender credits as provided in § 1026.37(g)(6)(ii). Such lender credits include non-specific lender credits as well as specific lender credits. *See* comment 19(e)(3)(i)–5.

* * * * *

37(h) Calculating cash to close.

37(h)(1) For all transactions.

* * * * *

2. *Simultaneous loans for subordinate financing.* The sale price disclosed § 1026.37(a)(7) is not used under § 1026.37(h)(1) in the calculating cash to close table calculations on the Loan Estimate for a simultaneous loan for subordinate financing disclosed.

37(h)(1)(ii) Closing costs financed.

1. *Calculation of amount.* The amount of closing costs financed disclosed under § 1026.37(h)(1)(ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed under § 1026.37(f) and (g) from the loan amount disclosed under § 1026.37(b)(1). The estimated total amount of payments to third parties may include the sale price disclosed under § 1026.37(a)(7), if applicable. If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that the absolute value of the amount disclosed under § 1026.37(h)(1)(ii) does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6). If the result of the calculation is zero or negative, the amount of $0 is disclosed under § 1026.37(h)(1)(ii).

2. *Loan amount.* The loan amount disclosed under § 1026.37(b)(1), which is a component of the closing costs financed calculation, is the total amount the consumer will borrow, as reflected by the face amount of the note. Financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount.

37(h)(1)(iii) Down payment and other funds from borrower.

1. *Down payment calculation.* For purposes of § 1026.37(h)(1)(iii)(A)(*1*), the down payment is calculated as the difference between the sale price of the property and the sum of the loan amount and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv). Minimum cash investments required of consumers under some loan programs are not necessarily reflected, and accurate disclosure of the down payment under § 1026.37(h)(1)(iii)(A)(*1*) does not affect compliance or non-compliance with such loan programs' requirements.

2. *Funds for borrower.* Section 1026.37(h)(1)(iii)(A)(*2*) requires that, when the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) exceeds

the sale price disclosed under § 1026.37(a)(7), the amount of funds from the consumer is determined in accordance with § 1026.37(h)(1)(v). Section 1026.37(h)(1)(iii)(B) requires that, for all non-purchase transactions, the amount of funds from the consumer is determined in accordance with § 1026.37(h)(1)(v). Under § 1026.37(h)(1)(v), the amount to be disclosed under § 1026.37(h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) is determined by subtracting the sum of the loan amount and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the real estate closing.

* * * * *

37(h)(1)(v) Funds for borrower.

1. *No funds for borrower.* When the down payment is determined in accordance with § 1026.37(h)(1)(iii)(A)(*1*), the amount disclosed under § 1026.37(h)(1)(v) as funds for the borrower is $0.

2. *Total amount of existing debt satisfied in the transaction.* The amounts disclosed under § 1026.37(h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B), as applicable, and (h)(1)(v) are determined by subtracting the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. The total amount of all existing debt being satisfied in the transaction includes amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable.

37(h)(1)(vi) Seller credits.

1. *Non-specific seller credits to be disclosed.* Non-specific seller credits, *i.e.,* general payments from the seller to the consumer that do not pay for a particular fee on the disclosures provided under § 1026.19(e)(1), known to the creditor at the time of delivery of the Loan Estimate, are disclosed under § 1026.37(h)(1)(vi). For example, a creditor may learn the amount of seller credits that will be paid in the transaction from information obtained from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

2. *Seller credits for specific charges.* To the extent known by the creditor at the time of delivery of the Loan Estimate, specific seller credits, *i.e.,* seller credits for specific items disclosed under § 1026.37(f) and (g), may be either disclosed under § 1026.37(h)(1)(vi) or reflected in the amounts disclosed for those specific items under § 1026.37(f) and (g). For example, if the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay half of a $100 required pest inspection fee, the creditor may either disclose the required pest inspection fee as $100 under § 1026.37(f) with a $50 seller credit disclosed under § 1026.37(h)(1)(vi) or disclose the required pest inspection fee as $50 under § 1026.37(f), reflecting the specific seller credit in the amount disclosed for the pest inspection fee.

37(h)(1)(vii) Adjustments and other credits.

1. *Other credits known at the time the Loan Estimate is issued.* Amounts expected to be paid at closing by third parties not involved in the transaction, such as gifts from family members and not otherwise identified under § 1026.37(h)(1), are included in the amount disclosed under § 1026.37(h)(1)(vii). Amounts expected to be provided to consumers in advance of consummation by third parties not otherwise involved in the transaction, including amounts paid to consumers before consummation from family members, are not required to be disclosed under § 1026.37(h)(1)(vii).

* * * * *

5. *Proceeds from subordinate financing or other source.* Funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii) on the first-lien transaction Loan Estimate.

6. *Reduction in amounts for adjustments.* Adjustments that require additional funds from the consumer pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v), may be included in the amount disclosed under § 1026.37(h)(1)(vii), provided such amounts are not included in the calculation under § 1026.37(h)(1)(iii) or (v) as debt being satisfied in the real estate transaction. Additional examples of such adjustments for additional funds from the consumer include prorations for property taxes and homeowner's association dues. The total amount disclosed under § 1026.37(h)(1)(vii) is a sum of adjustments requiring additional funds from the consumer, calculated as positive amounts, and other credits, such as those provided for in comment 37(h)(1)(vii)–1, calculated as negative amounts.

* * * * *

37(h)(2) Optional alternative calculating cash to close table for transactions without a seller and simultaneous loans for subordinate financing.

1. *Optional use.* The optional alternative disclosure of the calculating cash to close table in § 1026.37(h)(2) may only be provided by a creditor in a transaction without a seller, or for simultaneous loans for subordinate financing. In a purchase transaction the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate only if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The use of this alternative table for transactions without a seller and simultaneous loans for subordinate financing is optional, but creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under § 1026.37(d)(2).

37(h)(2)(iii) Payoffs and payments.

1. *Examples.* The amounts incorporated in the total amount disclosed under § 1026.37(h)(2)(iii), unless disclosed under § 1026.37(g)(4), include, but are not limited to: payoffs of existing liens secured by the property identified under § 1026.37(a)(6) such as existing mortgages, deeds of trust, judgments that have attached to the real property, mechanics' and materialmen's liens, and local, State and Federal tax liens; payments of unsecured outstanding debts of the consumer; if the loan purpose is construction in accordance with § 1026.37(a)(9)(iii), construction costs the consumer will be obligated to pay; and payments to other third parties for outstanding debts of the consumer, excluding settlement services. Amounts that will be paid with funds provided by the consumer, including partial payments, such as a portion of construction costs, or by third parties and disclosed on the Closing Disclosure under § 1026.38(t)(5)(vii)(B) are calculated as credits, using positive numbers, in the total amount disclosed under § 1026.37(h)(2)(iii).

2. *Disclosure of subordinate financing.* On the Loan Estimate for a first-lien transaction disclosed under § 1026.37(h)(2) that also has a simultaneous loan for subordinate financing, the proceeds of the subordinate financing are included, as a positive number, in the total amount disclosed under § 1026.37(h)(2)(iii). The total amount disclosed under § 1026.37(h)(2)(iii) will be a negative number unless the proceeds from subordinate financing and any amounts entered as credits as discussed in comment 37(h)(2)(iii)–1 equal or exceed the total amount of other payoffs and payments that are included in the calculation for the amount disclosed under § 1026.37(h)(2)(iii), in which case the total amount disclosed under § 1026.37(h)(2)(iii) is disclosed as $0 or a positive number.

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37(k) Contact information.

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3. *Contact.* Section 1026.37(k)(2) requires the disclosure of the name and NMLSR ID of the person who is the primary contact for the consumer, labeled "Loan Officer." The loan officer is generally the natural person employed by the creditor or mortgage broker disclosed under § 1026.37(k)(1) who interacts most frequently with the consumer and who has an NMLSR ID or, if none, a license number or other unique identifier to be disclosed under § 1026.37(k)(2), as applicable.

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37(l) Comparisons.

37(l)(1) In five years.

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Paragraph 37(l)(1)(i).

1. *Calculation of total payments in five years.* The amount disclosed under § 1026.37(l)(1)(i) is the sum of principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment. For guidance on how to calculate interest for mortgage loans that are Adjustable Rate products under § 1026.37(a)(10)(i)(A) for purposes of § 1026.37(l)(1)(i), see comment 17(c)(1)–10. In addition, for purposes of § 1026.37(l)(1)(i), the creditor should assume that the consumer makes payments as scheduled and on time.

For purposes of § 1026.37(l)(1)(i), mortgage insurance means "mortgage insurance or any functional equivalent" as defined under comment 37(c)(1)(i)(C)–1 and includes prepaid or escrowed mortgage insurance. Loan costs are those costs disclosed under § 1026.37(f).

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37(l)(3) Total interest percentage.

1. *General.* When calculating the total interest percentage, the creditor assumes that the consumer will make each payment in full and on time and will not make any additional payments. The creditor includes prepaid interest when calculating the total interest percentage.

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37(o) Form of disclosures.

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37(o)(4) Rounding.

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37(o)(4)(i) Nearest dollar.

Paragraph 37(o)(4)(i)(A).

1. *Rounding of dollar amounts.* Section 1026.37(o)(4)(i)(A) requires that certain dollar amounts be rounded to the nearest whole dollar. For example, under § 1026.37(o)(4)(i)(A), periodic mortgage insurance payments are rounded and disclosed to the nearest dollar, such that a periodic mortgage insurance payment of $164.50 is disclosed under § 1026.37(c)(2)(ii) as $165, but payments of $164.49 are disclosed as $164. The prepaid per diem amounts disclosed under § 1026.37(g)(2)(iii) and the monthly amounts for the initial escrow payment at closing disclosed pursuant to § 1026.37(g)(3)(i) through (iii) and (v) are rounded to the nearest cent and are disclosed to two decimal places. For example, under § 1026.37(g)(2)(iii), per diem interest of $68 is disclosed as $68.00, with the two zeros disclosed. See form H–24(B) in appendix H to this part for an illustration of per diem amounts for homeowner's insurance disclosed pursuant to § 1026.37(g)(3)(i).

* * * * *

37(o)(4)(ii) Percentages.

1. *Decimal places.* Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed to be exact amounts rounded to three decimal places, but the creditor does not disclose trailing zeros to the right of the decimal point. For example, a 2.4999 percent annual percentage rate, when rounded as an exact amount to three decimal places, becomes 2.500% but is disclosed as "2.5%" under § 1026.37(o)(4)(ii). Similarly, a 7.005 percent annual percentage rate is disclosed as "7.005%," and a 7.000 percent annual percentage rate is disclosed as "7%."

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Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

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4. *Tolerance cures necessitating principal curtailments.* Where a contractual or other legal obligation of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the consumer, the creditor may provide a reduction in principal balance (principal curtailment) to satisfy the requirements of § 1026.19(f)(2)(v).

i. A principal curtailment to provide a tolerance refund under § 1026.19(f)(2)(v) may be disclosed under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(vii)(B) marked with the phrase "Paid Outside of Closing," or the abbreviation "P.O.C.," a statement that this amount includes a refund for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3), and the amount of such refund under § 1026.19(f)(2)(v).

ii. A principal curtailment to provide a tolerance refund under § 1026.19(f)(2)(v) may also be disclosed under § 1026.38(t)(5)(ix) with a statement that this amount includes a refund for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3), and the amount of such refund under § 1026.19(f)(2)(v).

38(a) General information.

38(a)(3) Closing information.

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38(a)(3)(iii) Disbursement date.

1. *Simultaneous loans for subordinate financing disbursement date.* The disbursement date on the Closing Disclosure for a simultaneous loan for subordinate financing is the date some or all of the loan amount disclosed under § 1026.38(b) is expected to be paid to the consumer or a third party.

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38(a)(3)(vii) Sale price.

1. *No seller.* In transactions where there is no seller, such as in a refinancing, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. To comply with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine approval of the credit transaction. If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property. Where an estimate is disclosed, rather than an appraisal, the label for the disclosure is changed to "Estimated Prop. Value." The creditor may use the estimate provided by the consumer at application but, if it has performed its own estimate of the property value for purposes of approving the credit transaction by the time the disclosure is provided to the consumer, the creditor must disclose the estimate it used for purposes of approving the credit transaction.

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38(a)(4) Transaction information.

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2. *No seller transactions or simultaneous loans for subordinate financing.* In transactions where there is no seller, such as in a refinancing or home equity loan, or for simultaneous loans for subordinate financing in purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction, the disclosure under § 1026.38(a)(4)(ii) may be left blank. *See also* § 1026.38(t)(5)(vii)(A).

* * * * *

4. *Consumers for purposes of rescission.* Section 1026.38(a)(4)(i) requires disclosure of the consumer's name and mailing address, labeled "Borrower." In rescindable transactions, § 1026.38(a)(4)(i) requires disclosing the name and mailing address of each natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest and regardless of whether that person is an obligor. For guidance on how to disclose multiple consumers, see comment 38(a)(4)–1.

* * * * *

38(d) Costs at closing.

38(d)(2) Alternative table for transactions without a seller and simultaneous loans for subordinate financing.

1. *Required use.* The disclosure of the alternative cash to close table in § 1026.38(d)(2) may only be provided by a creditor in a transaction without a seller or for a simultaneous loan for subordinate financing. In a purchase transaction, the optional alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of this alternative table for transactions without a seller and simultaneous loans for subordinate financing is required if the Loan Estimate provided to the consumer disclosed the optional alternative table under § 1026.37(d)(2) and must be used in conjunction with the use of the alternative calculating cash to close disclosure under § 1026.38(e).

* * * * *

38(e) Alternative calculating cash to close table for transactions without a seller and simultaneous loans for subordinate financing.

1. *Required use.* The disclosure of the table in § 1026.38(e) may only be provided by a creditor in a transaction without a seller or for a simultaneous loan for subordinate financing. In a purchase transaction, the optional alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of this alternative calculating cash to close table for transactions without a seller and simultaneous loans for subordinate financing is required for transactions in which the Loan Estimate provided to the consumer disclosed the optional alternative table pursuant to § 1026.37(h)(2), and must be used in conjunction with the alternative disclosure under § 1026.38(d)(2).

* * * * *

6. *Estimated amounts.* The amounts disclosed on the alternative calculating cash to close table under the subheading "Loan Estimate" under § 1026.38(e)(1)(i), (2)(i), (4)(i) and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer under § 1026.19(e).

* * * * *

38(e)(2) Total closing costs.

* * * * *

Paragraph 38(e)(2)(iii)(A).

* * * * *

3. *Statements regarding excess amount and any credit to the consumer.* Section

1026.38(e)(2)(iii)(A) requires a statement that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) or a reduction in principal balance (principal curtailment) under § 1026.38(g)(4) or (t)(5)(vii)(B), if provided under § 1026.19(f)(2)(v). See form H–25(F) in appendix H to this part for examples of such statements under § 1026.38(h)(3). *See also* comments 38–4 and 38(h)(3)–2.

38(e)(3) Closing costs paid before closing.

* * * * *

Paragraph 38(e)(3)(iii)(B).

1. *Equal amount.* Under § 1026.38(e)(3)(iii)(B), the creditor gives a statement that the "Final" amount disclosed under § 1026.38(e)(3)(ii) is equal to the "Loan Estimate" amount disclosed under § 1026.38(e)(3)(i), only if the "Final" amount is $0.00, because the "Loan Estimate" amount is always disclosed as $0 under § 1026.38(e)(3)(i). See comment 38(e)(3)(i)–1.

38(f) Closing cost details; loan costs.

* * * * *

2. *Construction loan inspection and handling fees.* Construction loan inspection and handling fees are loan costs associated with the transaction for purposes of § 1026.38(f). For information on how to disclose inspection and handling fees for the staged disbursement of construction loan proceeds if the amount or number of such fees or when they will be collected is not known at or before consummation, see comments 37(f)–3, 37(f)(6)–3, and app. D–7.viii. See § 1026.17(e) and its commentary concerning the effect of subsequent events that cause inaccuracies in disclosures.

* * * * *

38(g) Closing costs details; other costs.

38(g)(1) Taxes and other government fees.

* * * * *

3. *Recording fees.* i. *Fees for recording deeds and security instruments.* Section 1026.38(g)(1)(i)(A) requires, on the first line under the subheading "Taxes and Other Government Fees" and before the columns described in § 1026.38(g), disclosure of the total fees expected to be paid to State and local governments for recording deeds and, separately, the total fees expected to be paid to State and local governments for recording security instruments. On a line labeled "Recording Fees," form H–25 of appendix H to this part illustrates such disclosures with the additional labels "Deed" and "Mortgage," respectively.

ii. *Total of all recording fees.* Section 1026.38(g)(1)(i)(B) requires, on the first line under the subheading "Taxes and Other Government Fees" and in the applicable column described in § 1026.38(g), disclosure of the total amounts paid for recording fees, including but not limited to the amounts subject to § 1026.38(g)(1)(i)(A). The total amount disclosed under § 1026.38(g)(1)(i)(B) also includes recording fees expected to be paid to State and local governments for recording any other instrument or document to preserve marketable title or to perfect the creditor's security interest in the property. See comments 37(g)(1)–1, –2, and –3 for discussions of the difference between transfer taxes and recording fees.

38(g)(2) Prepaids.

* * * * *

3. *No prepaid interest.* If interest is not collected for a portion of a month or other period between closing and the date from which interest will be collected with the first monthly payment, then $0.00 must be disclosed under § 1026.38(g)(2).

* * * * *

38(g)(4) Other.

1. *Costs disclosed.* The costs disclosed under § 1026.38(g)(4) include all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, pre-consummation inspection fees, and other fees that are part of the real estate transaction but not required by the creditor or not disclosed elsewhere under § 1026.38. The creditor also must disclose the following amounts under § 1026.38(g)(4) unless the optional alternative tables for transactions without a seller and simultaneous loans for subordinate financing are used and such amounts are disclosed under § 1026.38(t)(5)(vii)(B): construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.38(a)(3)(vi), and payoff of unsecured debt.

i. *General.* The amounts disclosed under § 1026.38(g)(4) must be placed in either the paid "Before Closing" or paid "At Closing" column under the subheading "H. Other" of the heading "Other Costs."

ii. *Construction Costs.* If amounts for construction costs are contracted to be paid at closing, they are disclosed in the paid "At Closing" column. See comment app. D–7.vii for an explanation of the disclosure of construction costs for a construction or construction-permanent loan and comment app. D–7.viii for an explanation of the disclosure of construction loan inspection and handling fees.

iii. *Disclosing refunds.* See also comment 38–4 for an explanation of how to disclose a reduction in principal balance (principal curtailment) under § 1026.38(g)(4) to provide a refund under § 1026.19(f)(2)(v).

* * * * *

38(i) Calculating cash to close.

* * * * *

2. *Statements of differences.* The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise required. See comment 38(t)(4)–1. Any amount in the Final column of the calculating cash to close table under § 1026.38(i) is shown to two decimal places. Under § 1026.38(t)(4)(i)(C), however, any amount in the Loan Estimate column of the calculating cash to close table under § 1026.38(i) is rounded to the nearest dollar amount to match the corresponding estimated amount disclosed on the Loan Estimate's calculating cash to close table under § 1026.37(h). For purposes of § 1026.38(i)(1)(iii), (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (8)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the amount in the Loan Estimate column of the Total Closing Costs row disclosed under § 1026.38(i)(1)(i) is $12,500, but the non-rounded estimate of Total Closing Costs is $12,500.35, and the amount in the Final column of the Total Closing Costs row disclosed under § 1026.38(i)(1)(ii) is $12,500.35, then, even though the table would appear to show a $0.35 increase in Total Closing Costs, no statement of such increase is given under § 1026.38(i)(1)(iii).

3. *Statements that the consumer should see details.* The provisions of § 1026.38(i)(4)(iii)(A), (i)(5)(iii)(A), (i)(7)(iii)(A), and (i)(8)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(j). Form H–25 of appendix H to this part contains examples of these statements. For example, § 1026.38(i)(7)(iii)(A) requires a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) and, as applicable, in the seller-paid column under § 1026.38(f) and (g). For example, form H–25(B) of appendix H to this part's statement "See Seller Credits in Section L," in which the words "Section L" are in boldface font, complies with this provision. In addition, for example, § 1026.38(i)(5)(iii)(A) requires a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(ii). For example, the following statement, which is similar to that shown on form H–25(B) of appendix H to this part for § 1026.38(i)(7)(iii)(A), "See Deposit in Section L," in which the words "Section L" are in boldface font, complies with this provision. In addition, for example, the statement "See details in Sections K and L," in which the words "Sections K and L" are in boldface font, complies with the requirement under § 1026.38(i)(8)(iii)(A). See form H–25(B) of appendix H to this part for an example of the statement required by § 1026.38(i)(8)(iii)(A).

* * * * *

5. *Estimated amounts.* The amounts disclosed in the "Loan Estimate" column of the calculating cash to close table under § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer.

38(i)(1) Total closing costs.

Paragraph 38(i)(1)(iii)(A).

* * * * *

3. *Statements regarding excess amount and any credit to the consumer.* Section 1026.38(i)(1)(iii)(A)(*3*) requires statements that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3), or a reduction in principal balance (principal curtailment) under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(ix), if provided under § 1026.19(f)(2)(v). See form H–25(F) of appendix H to this part for examples of such statements under § 1026.38(h)(3). *See also* comments 38–4 and 38(h)(3)–2.

38(i)(2) Closing costs paid before closing.

* * * * *

Paragraph 38(i)(2)(iii)(B).

1. *Equal amount.* Under § 1026.38(i)(2)(iii)(B), the creditor or closing agent will give a statement that the "Final" amount disclosed under § 1026.38(i)(2)(ii) is equal to the "Loan Estimate" amount disclosed under § 1026.38(i)(2)(i), only if the "Final" amount is $0.00, because the "Loan Estimate" amount is always disclosed as $0 under § 1026.38(i)(2)(i). *See* comment 38(i)(2)(i)–1.

38(i)(3) Closing costs financed.

1. *Calculation of amount.* The amount of closing costs financed disclosed under § 1026.38(i)(3) is determined by subtracting the total amount of payments to third parties not otherwise disclosed under § 1026.38(f) and (g) from the loan amount disclosed under § 1026.38(b). The total amount of payments to third parties includes the sale price of the property disclosed under § 1026.38(j)(1)(ii). If the result of the calculation is zero or negative, the amount of $0.00 is disclosed under § 1026.38(i)(3). If the result of the calculation is positive, that amount is disclosed as a negative number under § 1026.38(i)(3), but only to the extent that the absolute value of the amount disclosed under § 1026.38(i)(3) does not exceed the total amount of closing costs disclosed under § 1026.38(h)(1). (The total amount of closing costs disclosed under § 1026.38(h)(1) will never be less than zero because, if the total amount of closing costs disclosed under § 1026.38(h)(1) is a negative number, the amount of $0.00 is disclosed under § 1026.38(i)(3).)

2. *Loan amount.* The loan amount disclosed under § 1026.38(b), which is used in the closing costs financed calculation, is the total amount the consumer will borrow, as reflected by the face amount of the note. Financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount.

38(i)(4) Down payment/funds from borrower.

Paragraph 38(i)(4)(ii)(A).

1. *Down payment.* Under § 1026.38(i)(4)(ii)(A)(*1*), the down payment is calculated as the difference between the sale price of the property and the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to disclosed under § 1026.38(j)(2)(iv). Minimum cash investments required of borrowers under some loan programs are not necessarily reflected, and accurate disclosure of the down payment under § 1026.38(i)(4)(ii)(A)(*1*) does not affect compliance or non-compliance with such loan programs' requirements. The "Final" amount disclosed for "Down Payment/Funds from Borrower" reflects any change, following delivery of the Loan Estimate, in the amount of down payment required of the consumer. This change might result, for example, from an increase in the purchase price of the property.

2. *Funds for borrower.* Section 1026.38(i)(4)(ii)(A)(*2*) requires that, when the sum of the loan amount disclosed under § 1026.38(b), and any amount of existing loans assumed or taken subject to disclosed under § 1026.38(j)(2)(iv) exceeds the sale price disclosed under § 1026.38(j)(1)(ii), the amount of funds from the consumer is determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the "Final" amount of "Funds from Borrower" to be disclosed under § 1026.38(i)(4)(ii)(A)(*2*) is determined by subtracting the sum of the loan amount and any amount of existing loans assumed or taken subject to disclosed under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the real estate closing disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The amount of "Funds from Borrower" under the subheading "Final" is disclosed either as a positive number or $0.00, depending on the result of the calculation. An increase in the amount of "Funds from Borrower" under the subheading "Final" relative to the corresponding amount under the subheading "Loan Estimate" might result, for example, from a decrease in the loan amount or an increase in the amount of existing debt being satisfied in the real estate closing. For additional discussion of the determination of the "Down Payment/Funds from Borrower" amount, see comment 38(i)(6)(ii)–1.

Paragraph 38(i)(4)(ii)(B).

1. *Funds from borrower.* Section 1026.38(i)(4)(ii)(B) requires that, in all transactions not subject to § 1026.38(i)(4)(ii)(A), the "Final" amount disclosed for "Down Payment/Funds from Borrower" is the amount of "Funds from Borrower" determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the "Final" amount of "Funds from Borrower" to be disclosed under § 1026.38(i)(4)(ii)(B) is determined by subtracting the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to disclosed under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the real estate closing disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The "Final" amount of "Funds from Borrower" is disclosed either as a positive number or $0.00, depending on the result of the calculation. An increase in the "Final" amount of "Funds from Borrower" relative to the corresponding "Loan Estimate" amount might result, for example, from a decrease in the loan amount or an increase in the amount of existing debt being satisfied in the real estate closing. For additional discussion of the determination of the "Down Payment/Funds from Borrower" amount, see comment 38(i)(6)(ii)–1.

Paragraph 38(i)(4)(iii)(A).

1. *Statement of differences.* Section 1026.38(i)(4)(iii)(A) requires a statement that the consumer has increased or decreased this payment, as applicable, along with a statement that the consumer should see the details disclosed under § 1026.38(j)(1) or (2), as applicable. The creditor makes this disclosure by referencing the corresponding label on the Closing Disclosure under which the information accounting for the increase in the "Down Payment/Funds from Borrower" amount is disclosed. For example, when the calculation is determined in accordance with § 1026.38(i)(4)(ii)(A)(*1*), if the purchase price of the property has increased and therefore caused the "Down Payment" amount to increase, the statement, "You increased this payment. See details in Section K," with the words "increased" and "Section K" in boldface, complies with this requirement. In addition, in the event the amount of the credit extended by the creditor has decreased and therefore caused the "Funds from Borrower" amount to increase, the statement, "You increased this payment. See details in Section L," with the words "increased" and "Section L" in boldface complies with this requirement.

38(i)(5) Deposit.

1. *When no deposit.* Section 1026.38(i)(5) requires the disclosure in the calculating cash to close table of the deposit required to be disclosed under § 1026.37(h)(1)(iv) and under § 1026.38(j)(2)(ii), under the subheadings "Loan Estimate" and "Final," respectively. Under § 1026.37(h)(1)(iv), for all transactions other than a purchase transaction as defined in § 1026.37(a)(9)(i), the amount required to be disclosed is $0. In a purchase transaction in which no deposit is paid in connection with the transaction, under §§ 1026.37(h)(1)(iv) and 1026.38(i)(5)(i) the amount required to be disclosed is $0, and under § 1026.38(i)(5)(ii) the amount required to be disclosed is $0.00.

38(i)(6) Funds for borrower.

Paragraph 38(i)(6)(ii).

1. *Final funds for borrower.* Section 1026.38(i)(6)(ii) provides that the "Final" amount for "Funds for Borrower" is determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the "Final" amount of "Funds for Borrower" to be disclosed under § 1026.38(i)(6)(ii) is determined by subtracting the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to disclosed under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The amount is disclosed under § 1026.38(i)(6)(ii) either as a negative number or as $0.00, depending on the result of the calculation. The "Final" amount of "Funds for Borrower" disclosed under § 1026.38(i)(6)(ii) is the amount to be disbursed to the consumer or a designee of the consumer at consummation, if any.

2. *No funds for borrower.* When the down payment is determined in accordance with § 1026.38(i)(4)(ii)(A)(*1*), the transaction is a purchase transaction in which the sale price is greater than the sum of the loan amount and any amount of existing loans assumed or taken subject to. Because there is no remaining amount to be disbursed to the consumer or third party at consummation, the amount disclosed under § 1026.38(i)(6)(iv) as "Funds for Borrower" will be $0.00.

38(i)(7) Seller credits.

* * * * *

Paragraph 38(i)(7)(iii)(A).

1. *Statement that the consumer should see details.* Under § 1026.38(i)(7)(iii)(A), if the

amount disclosed under § 1026.38(i)(7)(ii) in the Final column is not equal to the amount disclosed under § 1026.38(i)(7)(i) in the Loan Estimate column (unless the difference is due to rounding), the creditor must disclose a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table, regardless of whether the difference in the "Seller Credits" in the calculating cash to close table is attributable to general or specific seller credits. However, the creditor may not disclose a statement that the consumer should see the seller-paid column disclosed in the closing cost details table under § 1026.38(f) and (g), unless the difference in the "Seller Credits" in the calculating cash to close table is attributable at least in part to specific seller credits. If, for example, a decrease in the "Seller Credits" is attributable only to a decrease in general (*i.e.,* lump sum) seller credits, then a statement is given under the subheading "Did this change?" in the calculating cash to lose table that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table. Form H–25(B) in appendix H to this part demonstrates this disclosure where the decrease in seller credits is attributable only to a decrease in general seller credits; form H–25(B)'s statement "See Seller Credits in Section L," in which the words "Section L" are in boldface font, complies with this requirement. Where the decrease in the "Seller Credits" is attributable in whole or in part to specific seller credits, then a statement is given under the subheading "Did this change?" that the consumer should see both the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column disclosed in the closing cost details table under § 1026.38(f) or (g). For example, the statement "See Seller-Paid column on page 2 and Seller Credits in Section L," in which the words "Seller-Paid" and "Section L" are in boldface font, complies with this requirement.

38(i)(8) Adjustments and other credits.

Paragraph 38(i)(8)(ii).

1. *Adjustments and other credits.* Under § 1026.38(i)(8)(ii), the "Final" amount for "Adjustments and Other Credits" would include, for example, prorations of taxes or homeowner's association fees, utilities used but not paid for by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the consummation, and interest on loan assumptions. This category also includes generalized credits toward closing costs given by parties other than the seller. For additional guidance regarding adjustments and other credits, see commentary to §§ 1026.37(h)(1)(vii) and 1026.38(j)(2)(vi) and (xi). If the calculation required by § 1026.38(i)(8)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

* * * * *

38(j) Summary of borrower's transaction.

* * * * *

3. *Identical amounts.* The amounts disclosed under the following provisions of § 1026.38(j) are the same as the amounts disclosed under the corresponding provisions of § 1026.38(k): § 1026.38(j)(1)(ii) and (k)(1)(ii); § 1026.38(j)(1)(iii) and (k)(1)(iii); if the amount disclosed under § 1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, § 1026.38(j)(1)(v) and (k)(1)(iv); § 1026.38(j)(1)(vii) and (k)(1)(vi); § 1026.38(j)(1)(viii) and (k)(1)(vii); § 1026.38(j)(1)(ix) and (k)(1)(viii); § 1026.38(j)(1)(x) and (k)(1)(ix); § 1026.38(j)(2)(iv) and (k)(2)(iv); § 1026.38(j)(2)(v) and (k)(2)(vii); if the amount disclosed under § 1026.38(j)(2)(vi) is attributable to contractual adjustments between the consumer and the seller, § 1026.38(j)(2)(vi) and (k)(2)(viii); § 1026.38(j)(2)(viii) and (k)(2)(x); § 1026.38(j)(2)(ix) and (k)(2)(xi); § 1026.38(j)(2)(x) and (k)(2)(xii); and § 1026.38(j)(2)(xi) and (k)(2)(xiii).

38(j)(1) Itemization of amounts due from borrower.

Paragraph 38(j)(1)(ii).

1. *Contract sales price and personal property.* Section 1026.38(j)(1)(ii) requires disclosure of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items. On the Closing Disclosure for a simultaneous loan for subordinate financing, no contract sales price is disclosed under § 1026.38(j)(1)(ii). Personal property is defined by State law, but could include such items as carpets, drapes, and appliances. Manufactured homes are not considered personal property under § 1026.38(j)(1)(ii).

Paragraph 38(j)(1)(v).

1. *Contractual adjustments.* Section 1026.38(j)(1)(v) requires disclosure of amounts not otherwise disclosed under § 1026.38(j) that are owed to the seller but payable to the consumer after the real estate closing. For example, the following items must be disclosed and listed under the heading "Adjustments" under § 1026.38(j), to the extent applicable:

i. The balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption transaction;

ii. Any rent that the consumer will collect after the real estate closing for a period of time prior to the real estate closing; and

iii. The treatment of any tenant security deposit.

2. *Other consumer charges.* The amounts disclosed under § 1026.38(j)(1)(v) which are for charges owed by the consumer at the real estate closing not otherwise disclosed under § 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv). For example, any outstanding real estate property taxes are disclosed under § 1026.38(j)(1)(v) without a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv).

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38(j)(2) Itemization of amounts already paid by or on behalf of borrower.

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Paragraph 38(j)(2)(vi).

* * * * *

2. *Subordinate financing proceeds on first-lien Closing Disclosure.* Any financing arrangements or other new loans not otherwise disclosed under § 1026.38(j)(2)(iii) or (iv) must be disclosed under § 1026.38(j)(2)(vi) on the first-lien Closing Disclosure. For example, if the consumer is using a second mortgage loan to finance part of the purchase price, whether from the same creditor, another creditor, or the seller, the principal amount of the second loan must be disclosed with a brief explanation on the first-lien Closing Disclosure. In this example, the principal amount of the second loan is disclosed on the summaries of transactions table for the borrower's transaction either on line 04 under the subheading "L. Paid Already by or on Behalf of Borrower at Closing," or under the subheading "Other Credits." If the net proceeds of the subordinate financing are less than the principal amount of the subordinate financing, the net proceeds may be listed on the same line as the principal amount of the subordinate financing on the first-lien Closing Disclosure. For an example, see form H–25(C) of appendix H to this part.

* * * * *

5. *Gift funds.* A credit must be disclosed only for any money or other payments made at closing by third parties, including family members, not otherwise associated with the transaction, along with a description of the nature of the funds provided under § 1026.38(j)(2)(vi). Amounts provided in advance of the real estate closing to consumers by third parties, including family members, not otherwise associated with the transaction, are not required to be disclosed under § 1026.38(j)(2)(vi).

6. *Adjustments.* Section 1026.38(j)(2)(vi) requires the disclosure of a description and the amount of any additional amounts, not already disclosed under § 1026.38(f), (g), (h), and (j)(2), that are owed to the consumer but payable to the seller before the real estate closing. For example, rent paid to the seller from a tenant before the real estate closing for a period extending beyond the real estate closing is disclosed under § 1026.38(j)(2)(vi) and under the heading "Adjustments."

Paragraph 38(j)(2)(xi).

1. *Examples.* Section 1026.38(j)(2)(xi) requires the disclosure of any amounts the consumer is expected to pay after the real estate closing that are attributable in part to a period of time prior to the real estate closing. Examples of items that would be disclosed under § 1026.38(j)(2)(xi) include:

i. Utilities used but not paid for by the seller; and

ii. Interest on loan assumptions.

* * * * *

38(j)(4) Items paid outside of closing funds.

Paragraph 38(j)(4)(i).

1. *Charges not paid with closing funds.* Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed under § 1026.38(j) be marked as "paid outside of closing" or "P.O.C." The disclosure must identify the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person. For an example of a disclosure of a charge not made from closing funds, see form H–25(D) of appendix

H to this part. For an explanation of what constitutes closing funds, see § 1026.38(j)(4)(ii). See also comment 38–4 for an explanation of how to disclose a reduction in principal balance (principal curtailment) to provide a refund under § 1026.19(f)(2)(v).

* * * * *

38(k) Summary of seller's transaction.

1. *Transactions with no seller and simultaneous loans for subordinate financing.* Section 1026.38(k) does not apply in a transaction where there is no seller, such as a refinance transaction, a transaction with a construction purpose as defined in § 1026.37(a)(9)(iii), or a simultaneous loan for subordinate financing transaction if the first-lien Closing Disclosure records the entirety of the seller's transaction.

* * * * *

38(l) Loan disclosures.

* * * * *

38(l)(7) Escrow account.

Paragraph 38(l)(7)(i)(A)(2).

1. *Estimated costs not paid by escrow account funds.* Section 1026.38(l)(7)(i)(A)(*2*) requires the creditor to estimate the amount the consumer is likely to pay during the first year after consummation for the mortgage-related obligations described in § 1026.43(b)(8) that are known to the creditor and that will not be paid using escrow account funds. The creditor discloses this amount only if an escrow account will be established.

2. *During the first year.* Section 1026.38(l)(7)(i)(A)(*2*) requires disclosure based on payments during the first year after consummation. Alternatively, if the creditor elects to make the disclosures required by § 1026.38(l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) based on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, then the creditor may make the disclosures required by § 1026.38(l)(7)(i)(A)(*2*) based on a 12-month period beginning with the borrower's initial payment date (rather than beginning with consummation). *See* comment 38(l)(7)(i)(A)(*5*)–1.

Paragraph 38(l)(7)(i)(A)(4).

1. *Estimated costs paid using escrow account funds.* The amount the consumer will be required to pay into an escrow account with each periodic payment during the first year after consummation disclosed under § 1026.38(l)(7)(i)(A)(*4*) is equal to the sum of the amount of estimated escrow payments disclosed under § 1026.38(c)(1) (as described in § 1026.37(c)(2)(iii)) and the amount the consumer will be required to pay into an escrow account to pay some or all of the mortgage insurance premiums disclosed under § 1026.38(c)(1) (as described in § 1026.37(c)(2)(ii)).

Paragraph 38(l)(7)(i)(A)(5).

1. *During the first year.* Section 1026.38(l)(7)(i)(A)(*4*) requires disclosure of the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation. Section 1026.38(l)(7)(i)(A)(*1*) requires a disclosure, labeled "Escrowed Property Costs over Year 1," calculated as the amount disclosed under § 1026.38(l)(7)(i)(A)(*4*) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation. For example, creditors may base such disclosures on less than 12 payments if, based on the payment schedule dictated by the legal obligation, fewer than 12 periodic payments will be made to the escrow account during the first year after consummation. Alternatively, § 1026.38(l)(7)(i)(A)(*5*) permits the creditor to base the disclosures required by § 1026.38(l)(7)(i)(A)(*1*) and (*4*) on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, even if those disclosures differ from what would otherwise be disclosed under § 1026.38(l)(7)(i)(A)(*1*) and (*4*)—as, for example, when there are fewer than 12 periodic payments scheduled to be made to the escrow account during the first year after consummation.

Paragraph 38(l)(7)(i)(B)(1).

1. *Estimated costs paid directly by the consumer.* The creditor discloses an amount under § 1026.38(l)(7)(i)(B)(*1*) only if no escrow account will be established.

* * * * *

38(o) Loan calculations.

1. *Examples.* Section 1026.38(o)(1) and (2) sets forth the accuracy requirements for the total of payments and the finance charge, respectively. The following examples illustrate the interaction of these provisions:

i. Assume that loan costs that are designated borrower-paid at or before closing and that are part of the finance charge (see § 1026.4 for calculation of the finance charge) are understated by more than $100. For example, assume that borrower-paid loan origination fees (*see* § 1026.4(a)) are cumulatively understated by $150, resulting in the amounts disclosed as the total of payments and the finance charge both being understated by more than $100. Both the disclosed total of payments and the disclosed finance charge would not be accurate for purposes of § 1026.38(o)(1) and (2), respectively.

ii. Assume that loan costs that are designated borrower-paid at or before closing and that are not part of the finance charge are understated by more than $100. For example, assume that borrower-paid property appraisal and inspection fees that are excluded from the finance charge under § 1026.4(c)(7)(iv) are cumulatively understated by $150, resulting in the amount disclosed as the total of payments being understated by more than $100. The disclosed total of payments would not be accurate for purposes of § 1026.38(o)(1), but the disclosed finance charge would be accurate for purposes of § 1026.38(o)(2).

38(o)(1) Total of payments.

1. *Calculation of total of payments.* The total of payments is calculated in the same manner as the "In 5 Years" disclosure under § 1026.37(l)(1)(i), except that the disclosed amount reflects the total payments through the end of the loan term and excludes charges for loan costs disclosed under § 1026.38(f) that are designated on the Closing Disclosure as paid by seller or paid by others. A seller or other party, such as a lender, may agree to offset a loan cost, whether in whole or in part, through a specific credit, for example through a specific seller or lender credit. Because these loan costs are not paid by the consumer, the amounts of such loan costs offset by specific credits are excluded from the total of payments calculation. Non-specific credits, however, are generalized payments to the consumer that do not pay for a particular fee and therefore do not offset loan costs for purposes of the total of payments calculation. For guidance on the amounts included in the total of payments calculation, see comment 37(l)(1)(i)–1. For a discussion of lender credits, see comment 19(e)(3)(i)–5. For a discussion of seller credits, see comment 38(j)(2)(v)–1.

* * * * *

38(t) Form of disclosures.

* * * * *

38(t)(3) Form.

1. *Non-federally related mortgage loans.* For a transaction that is not a federally related mortgage loan, the creditor is not required to use form H–25 of appendix H to this part, although its use as a model form for such transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1)(i). Even when the creditor elects not to use the model form, § 1026.38(t)(1)(ii) requires that the disclosures contain only the information required by § 1026.38(a) through (s), and that the creditor make the disclosures in the same order as they occur in form H–25, use the same headings, labels, and similar designations as used in the form (many of which also are expressly required by § 1026.38(a) through (s)), and position the disclosures relative to those designations in the same manner as shown in the form. In order to be in a format substantially similar to form H–25, the disclosures required by § 1026.38 must be provided on letter size (8.5″ × 11″) paper.

* * * * *

38(t)(5) Exceptions.

* * * * *

Paragraph 38(t)(5)(v).

1. *Permissible form modifications to separate consumer and seller information.* The modifications to the form permitted by § 1026.38(t)(5)(v) may be made by the creditor in any one of the following ways:

i. Leave the applicable disclosure blank concerning the seller or consumer on the form provided to the other party;

ii. Omit the table or label, as applicable, for the disclosure concerning the seller or consumer on the form provided to the other party; or

iii. Provide to the seller, or assist the settlement agent in providing to the seller, a modified version of the form under § 1026.38(t)(5)(vi), as illustrated by form H–25(I) of appendix H to this part.

2. *Provision of separate disclosure to consumer.* If applicable State law prohibits sharing with the consumer the information disclosed under § 1026.38(k), a creditor may provide a separate form to the consumer. A creditor may also provide a separate form to the consumer in any other situation where the creditor in its discretion chooses to do so,

such as based on the seller's request. For the permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)–1.

3. *Provision of separate disclosure to seller.* To separate the information of the consumer and seller under § 1026.38(t)(5)(v), a creditor may provide (or assist the settlement agent in providing) a separate form to the seller where applicable State law prohibits sharing with the seller the information disclosed under § 1026.38(a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f), or (g), with respect to closing costs paid by the consumer, or § 1026.38(i), (j), (l) through (p), or (r), with respect to closing costs paid by the creditor and mortgage broker. A creditor may also provide (or assist the settlement agent in providing) a separate form to the seller in any other situation where the creditor in its discretion chooses to do so, such as based on the consumer's request. For the permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)–1.

Paragraph 38(t)(5)(vi).

1. For permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)–1.

38(t)(5)(vii) Transaction without a seller and simultaneous loans for subordinate financing.

* * * * *

2. *Appraised property value.* The modifications permitted by § 1026.38(t)(5)(vii) do not specifically refer to the label required by § 1026.38(a)(3)(vii)(B) for transactions that do not involve a seller, because the label is required by that section and therefore is not a modification. As required by § 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller and is modified under § 1026.38(t)(5)(vii) must contain the label "Appraised Prop. Value" or "Estimated Prop. Value" where there is no appraisal.

Paragraph 38(t)(5)(vii)(B).

1. *Amounts paid by third parties.* Under § 1026.38(t)(5)(vii)(B), the payoffs and payments table itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer, including designees of the consumer. Designees of the consumer for purposes of § 1026.38(t)(5)(vii)(B) include third parties who provide funds on behalf of the consumer. Such amounts may be disclosed as credits in the payoffs and payments table using negative numbers. Some examples of amounts paid by third parties that may be disclosed as credits on the payoffs and payments table under § 1026.38(t)(5)(vii)(B) include gift funds, grants, and proceeds from loans exempt from the disclosure requirements in § 1026.19(e), (f), and (g) under § 1026.3(h).

2. *Disclosure of subordinate financing.* On the Closing Disclosure for a first-lien transaction that also has a simultaneous loan for subordinate financing, the proceeds of the subordinate financing are included in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) as a negative number.

3. *Other examples.* For additional examples of items disclosed under § 1026.38(t)(5)(vii)(B), see comment 37(h)(2)(iii)–1. See also comment 38–4 for an explanation of how to disclose a reduction in principal balance (principal curtailment) under § 1026.38(t)(5)(vii)(B) to provide a refund under § 1026.19(f)(2)(v).

38(t)(5)(ix) Customary recitals and information.

1. *Customary recitals and information.* Section 1026.38(t)(5)(ix) permits an additional page to be added to the disclosure for customary recitals and information used locally in real estate settlements. Examples of such information include a breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred. See also comment 38–4 for an explanation of how to disclose a reduction in principal balance (principal curtailment) under § 1026.38(t)(5)(ix) to provide a refund under § 1026.19(f)(2)(v).

* * * * *

Appendix D—Multiple-Advance Construction Loans

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7. *Relation to §§ 1026.37 and 1026.38.* Creditors may use, at their option, the following methods to estimate and disclose the terms of multiple-advance construction loans pursuant to §§ 1026.37 and 1026.38. As stated in comment app. D–1, appendix D may also be used in multiple-advance transactions other than construction loans, when the amounts or timing of advances is unknown at consummation.

i. *Loan term.* A. *Disclosure as single transaction.* If the construction and permanent financing are disclosed as a single transaction, the loan term disclosed is the total combined term of the construction period and the permanent period. For example, if the term of the construction financing is 12 months and the term of the permanent financing is 30 years, and both phases are disclosed as a single transaction, the loan term disclosed is 31 years. See comment 37(a)(8)–3 for an explanation of the effect on disclosure of the loan term of minor variations in the number of days counted for the final month or year of a loan.

B. *Term of permanent financing.* Consistent with comment 37(a)(8)–3, the loan term of the permanent financing is counted from the date that interest for the first scheduled periodic payment of the permanent financing begins to accrue, regardless of when the permanent phase is disclosed.

ii. *Product.* A. *Separate construction loan disclosure.* If the construction financing is disclosed separately and has payments of interest only, the time period of the "Interest Only" feature that is disclosed as part of the product disclosure under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is the period during which interest-only payments are actually made and excludes any final balloon payment of principal and interest. For example, the product disclosure for a fixed rate, interest-only construction loan with a term of 12 months in which there will be 11 monthly interest payments and a final balloon payment of principal and interest is "11 mo. Interest Only, Fixed Rate."

B. *Combined construction-permanent disclosure.* If a single, combined construction-permanent disclosure is provided, the time period of the "Interest Only" feature that is disclosed as part of the product disclosure under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is the full term of the interest-only construction financing. For example, the product disclosure for a fixed rate, construction-permanent loan with an interest-only construction phase of 12 months is "1 Year Interest Only, Fixed Rate."

iii. *Interest rate.* If the permanent financing has an adjustable rate and separate disclosures are provided, the rate disclosed for the permanent financing is the fully-indexed rate pursuant to § 1026.37(b)(2) and its commentary. If the permanent financing has a fixed rate, the rate disclosed is based on the best information reasonably available at the time the disclosures are made. *See* comments 19(e)(1)(i)–1 and 19(f)(1)(i)–2. If the creditor may modify the rate for permanent financing when the construction financing converts to permanent financing, and such adjustment to the interest rate results in a corresponding adjustment to the payment, the creditor provides the disclosures pursuant to § 1026.20(c) regardless of whether the permanent financing has a fixed, adjustable, or step rate.

iv. *Initial periodic payment.* In calculating the initial payment amount disclosed pursuant to § 1026.37(b)(3) and using appendix D, the creditor may disregard the effect of certain minor variations, such as that months have different numbers of days, in making the calculation. *See* § 1026.17(c)(3).

v. *Increase in periodic payment.* A. Calculation of the construction financing periodic payments using the assumptions in appendix D produces interest-only periodic payments that are equal in amount. If a creditor provides a separate disclosure for fixed-rate construction financing, although a technically correct answer to "Can this amount increase after closing?" pursuant to § 1026.37(b)(6) is "NO" because appendix D produces interest-only periodic payments that are equal in amount, a creditor may disclose the answer as "YES" to reflect the fact that actual payments may be more than the amount calculated using appendix D.

B. If separate disclosures are provided for fixed-rate construction financing and appendix D is used to calculate the periodic payment, a creditor may omit the disclosures pursuant to § 1026.37(b)(6)(iii) and the disclosure of a range of payments under § 1026.37(c)(2)(i) in the construction financing disclosure.

C. If separate disclosures are provided for adjustable-rate construction financing and a creditor uses appendix D to calculate the periodic payment, a creditor provides disclosures reflecting changes that are due to changes in the interest rate but may omit disclosures reflecting changes that are due to changes in the total amount advanced. For example, a creditor would disclose "YES" as the answer to "Can this amount increase after closing?" pursuant to § 1026.37(b)(6), because the initial periodic payment may increase based upon an increase in the interest rate. A creditor may omit a reference to the Adjustable Payment table required by § 1026.37(i) because that disclosure would reflect a change due to a change in the total amount advanced.

vi. *Projected payments table.* A creditor must disclose a projected payments table for certain transactions secured by real property or a cooperative unit, pursuant to §§ 1026.37(c) and 1026.38(c), instead of the general payment schedule required by § 1026.18(g) or the interest rate and payments summary table required by § 1026.18(s). Accordingly, some home construction loans that are secured by real property or a cooperative unit are subject to §§ 1026.37(c) and 1026.38(c) and not § 1026.18(g). See comment app. D–6 for a discussion of transactions that are subject to § 1026.18(s). Following are illustrations of the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c), under each of these two alternatives:

A. If a creditor uses appendix D and elects pursuant to § 1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in §§ 1026.37(c) and 1026.38(c). Under §§ 1026.37(c) and 1026.38(c), the creditor must disclose the periodic payments during the construction phase in a projected payments table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under § 1026.18(g)" does not apply because the transaction is governed by §§ 1026.37(c) and 1026.38(c) rather than § 1026.18(g). If interest is payable only on the amount actually advanced for the time it is outstanding, the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part I.A.1. Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), unless the transaction has negative amortization, interest only, or step payment features, consistent with the requirement at § 1026.37(a)(10)(iii). In addition, the creditor must provide the balloon payment disclosures pursuant to §§ 1026.37(b)(5), 1026.37(b)(7)(ii), and 1026.38(b) and disclose the balloon payment in the projected payments table.

B. If the creditor elects to disclose the construction and permanent phases as a single transaction, the repayment schedule must be disclosed pursuant to appendix D, part II.C.2. Under appendix D, part II.C.2, the projected payments table must reflect the interest-only payments during the construction phase in a first column, which also reflects the amortizing payments for the permanent phase if the term of the construction phase is not a full year, followed by the appropriate column(s) reflecting the amortizing payments for the permanent phase. If interest is payable only on the amount actually advanced for the time it is outstanding, the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part II.A.1.

vii. *Construction costs as "Other" costs.* A. Construction costs are costs that the consumer contracts, at or before the real estate closing, to pay in whole or in part with loan proceeds. The amount of construction costs is disclosed under the subheading "Other" pursuant to § 1026.37(g)(4).

B. A creditor in some cases places a portion of a construction loan's proceeds in a reserve or other account at consummation. The amount of such an account, at the creditor's option, may be disclosed separately from other construction costs or may be included in the amount disclosed for construction costs for purposes of the disclosures and calculations under §§ 1026.37 and 1026.38. If the creditor chooses to disclose separately the amount of loan proceeds placed in a reserve or other account at consummation, the creditor may disclose the amount as a separate itemized cost, along with a separate itemized cost for the balance of the construction costs, in accordance with § 1026.37(g)(4). The amount may be labeled with any accurate term, so long as any label the creditor uses is in accordance with the "clear and conspicuous" standard explained at comment 37(f)(5)–1. If the amount is disclosed separately, the balance of construction costs must exclude the amount to avoid double counting.

viii. *Construction loan inspection and handling fees.* Comment 4(a)–1.ii.A provides that inspection and handling fees for the staged disbursement of construction loan proceeds are part of the finance charge. Comment 37(f)–3 states that such inspection and handling fees are loan costs associated with the transaction for purposes of § 1026.37(f) and, as such, must be disclosed accurately as part of the Loan Estimate. These fees must also be disclosed accurately as part of the Closing Disclosure, and comment 38(f)–2 refers to explanations under comments 37(f)–3 and 37(f)(6)–3 for making these disclosures. Comment 37(f)–3 provides that, if such fees are collected at or before consummation, they are disclosed in the loan costs table. If such fees will be collected after consummation, they are disclosed in a separate addendum and are not counted for purposes of the calculating cash to close table. Comment 37(f)(6)–3 provides an explanation of how to disclose inspection and handling fees that will be collected after consummation in an addendum attached as an additional page after the last page of the Loan Estimate. Under comment 38(f)–2, the same explanation applies to an addendum used for disclosing such fees in the Closing Disclosure.

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Appendix H—Closed-End Forms and Clauses

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30. *Standard Loan Estimate and Closing Disclosure forms.* Forms H–24(A) and (G), H–25(A) and (H) through (J), and H–28(A), (F), (I), and (J) are model forms for the disclosures required under §§ 1026.37 and 1026.38. Under §§ 1026.37(o)(3) and 1026.38(t)(3), for federally related mortgage loans, forms H–24(A) (or, alternatively, H–24(G)) and H–25(A) (or, alternatively, H–25(H), (I) or (J)) are standard forms required to be used for the disclosures required under §§ 1026.37 and 1026.38, respectively.

Dated: July 28, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902
50 CFR Part 216
Fish and Fish Product Import Provisions of the Marine Mammal Protection Act; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 216

[Docket No. 0907301201–6406–03]

RIN 0648–AY15

Fish and Fish Product Import Provisions of the Marine Mammal Protection Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final action implements the import provisions of the Marine Mammal Protection Act (MMPA). This rule establishes conditions for evaluating a harvesting nation's regulatory program to address incidental and measures to address intentional mortality and serious injury of marine mammals in fisheries that export fish and fish products to the United States. Under this rule, fish and fish products from fisheries identified by the Assistant Administrator in the List of Foreign Fisheries can only be imported into the United States if the harvesting nation has applied for and received a comparability finding from NMFS. The rule establishes procedures that a harvesting nation must follow and conditions to meet, to receive a comparability finding for a fishery. The rule also establishes provisions for intermediary nations to ensure that intermediary nations do not import, and re-export to the United States, fish or fish products subject to an import prohibition. Agency actions and recommendations under this rule will be in accordance with U.S. obligations under applicable international law, including, among others, the World Trade Organization (WTO) Agreement.

DATES: This final rule is effective on January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Nina Young, Office of International Affairs and Seafood Inspection, NMFS at *Nina.Young@noaa.gov* or 301–427–8383. More information on this final action can be found on the NMFS Web site at *http://www.nmfs.noaa.gov/ia/.*

SUPPLEMENTARY INFORMATION:

MMPA Requirements

The MMPA contains provisions to address the incidental mortality and serious injury of marine mammals in both domestic and foreign commercial fisheries. With respect to foreign fisheries, section 101(a)(2) of the MMPA states that the Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary of Commerce shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States. (16 U.S.C. 1371(a)(2))

Section 102 (c)(3) of the MMPA states that it is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary of Commerce (Secretary) has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish. (16 U.S.C. 1372(c)(3)).

Petition To Ban Imports

On March 5, 2008, the U.S. Department of Commerce and other relevant Departments were petitioned under the MMPA to ban the imports of swordfish and swordfish products from nations that have failed to provide reasonable proof of the effects on ocean mammals of the commercial fishing technology in use to catch swordfish. The petition was submitted by two nongovernmental organizations, the Center for Biological Diversity and Turtle Island Restoration Network. The petition is available at the following Web site: *http://www.nmfs.noaa.gov/ia/.* Copies of this petition may also be obtained by contacting NMFS (see **FOR FURTHER INFORMATION CONTACT**).

On December 15, 2008, NMFS published a notice of receipt of the petition in the **Federal Register** and a request for public comments through January 29, 2009 (73 FR 75988). NMFS subsequently reopened the comment period for an additional 45 days from February 4 to March 23, 2009 (74 FR 6010, February 4, 2009).

On April 30, 2010, NMFS published an advance notice of proposed rulemaking (ANPR) describing options to develop procedures to implement the import provisions of MMPA section 101(a)(2) (75 FR 22731). On July 1, 2010, NMFS extended the comment period for an additional 60 days (75 FR 38070).

Additionally, on October 5, 2011, and on March 13, 2012, NMFS received correspondence from 21 animal rights and animal welfare organizations and Save Our Seals Fund, respectively, urging it to take action to ban the importation of Canadian and Scottish aquaculture farmed salmon into the United States due to the intentional killing of seals asserting such lethal deterrence is subject to the importation ban under the MMPA sections 101(a)(2) and 102(c)(3) for international fisheries. NMFS decided that the proposed rule would be broader in scope than the 2008 petition. In particular, NMFS decided that it would be not limited in application to swordfish fisheries and would cover intentional, as well as incidental, killing and serious injury of marine mammals.

NMFS published a proposed rule on August 11, 2015 (80 FR 48172) that included a 90-day comment period. A summary of the comments received on the proposed rule and how these comments were addressed in the final rule can be found below. Further background is provided in the above referenced **Federal Register** documents and is not repeated here.

National Environmental Policy Act (NEPA)

NMFS prepared a final Environmental Assessment (EA) to accompany this final rule. The EA was developed as an integrated document that includes a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA). Copies of the EA/RIR/FRFA analysis are available at the following address: Office of International Affairs and Seafood Inspection, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Copies are also available via the Internet at the NMFS Web site at *http://www.nmfs.noaa.gov/ia/.*

Overall Framework To Implement Sections 101(a)(2) and 102(c)(3) of the MMPA

Overview of the MMPA Import Rule Process

NMFS is amending 50 CFR 216.24 to add a new paragraph to establish procedures and conditions for evaluating a harvesting nation's regulatory program addressing marine mammal incidental mortality and serious injury in its export fisheries, to determine whether it is comparable in effectiveness to the U.S. regulatory program. The new paragraph also addresses intentional mortality and serious injury in fisheries that export to the United States. The following is a brief summary of the process for implementing MMPA sections 101(a)(2)(A) and 102(c)(3). Each step was discussed in detail in the proposed rule and is not repeated here.

List of Foreign Fisheries

NMFS will identify harvesting nations with commercial fishing operations that export fish and fish products to the United States and classify those fisheries based on their frequency of marine mammal interactions as either "exempt" or "export" fisheries (See regulatory text in this rule for definitions of exempt and export fisheries).

NMFS will publish in the **Federal Register** a List of Foreign Fisheries by harvesting nation, their fisheries, and their classifications. After the effective date of the rule, NMFS will publish a proposed List of Foreign Fisheries for comment and a subsequent final List. To develop this list, NMFS will notify each harvesting nation having fisheries that export to the United States and request that within 90 days of notification the harvesting nation submit reliable information about the commercial fishing operations identified, including the number of participants, number of vessels, gear type, target species, area of operation, fishing season, and any information regarding the frequency of marine mammal incidental mortality and serious injury, including programs to assess marine mammal populations. Harvesting nations will also be requested to submit copies of any laws, decrees, regulations, or measures to reduce incidental mortality and serious injury of marine mammals in those fisheries or prohibit the intentional killing or injury of marine mammals. NMFS will evaluate each harvesting nation's submission, any readily available information, request additional information from the harvesting nations, as necessary, and use this information to classify the fisheries. Where no information or analogous fishery or fishery information exists, NMFS will classify the commercial fishing operation as an export fishery until such time as the harvesting nation provides reliable information to properly classify the fishery or such information is readily available to the Assistant Administrator in the course of preparing the List of Foreign Fisheries.

The year prior to the expiration of the exemption period and every four years thereafter, NMFS will re-evaluate foreign commercial fishing operations and publish a notice of the proposed list, for public comment, and the final revised List of Foreign Fisheries in the **Federal Register**. In revising the list, NMFS may reclassify a fishery if new substantive information indicates the need to re-examine and possibly reclassify a fishery. The List of Foreign Fisheries will be organized by harvesting nation and other defining factors including geographic location of harvest, gear-type, target species or a combination thereof. Based upon the List of Foreign Fisheries, the Assistant Administrator will consult with harvesting nations, informing them of the regulatory requirements for exempt and export fisheries to import fish and fish products into the United States.

Exemption Period and New Entrants

NMFS will allow a one-time only, initial five-year exemption period, similar to the Interim Exemption for domestic fisheries that occurred in 1988 prior to implementation of the framework for addressing marine mammal bycatch in U.S. commercial fisheries, commencing from January 10, 2017. During the exemption period, the prohibitions of this rule will not apply to imports from the harvesting nation; however, harvesting nations are expected to develop regulatory programs to comply with the requirements to obtain a comparability finding during this time period.

After the conclusion of the one-time exemption period, any harvesting nation or fishery that has not previously exported to the United States wishing to commence exports will be granted a provisional comparability finding for a period not to exceed twelve months. Such fishery will be classified as an export fishery until the next List of Foreign Fisheries is published. If a harvesting nation provides the reliable information necessary to classify the commercial fishing operation at the time of the request for a provisional comparability finding or prior to the expiration of the provisional comparability finding, NMFS will classify the fishery in accordance with the definitions. Prior to the expiration of a provisional comparability finding, a harvesting nation must provide information to classify the fishery and apply for and receive a comparability finding for its fishery to continue exporting fish and fish products from that fishery to the United States after the expiration of the provisional comparability finding.

Consultations With Harvesting Nations

The rule includes three broad consultation areas: (1) Notification of the List of Foreign Fisheries; (2) notification of a denial of a comparability finding; and (3) discretionary consultations for transmittal or exchange of information.

Comparability Finding

By the end of the exemption period and every four years thereafter, a harvesting nation must have applied for and received a comparability finding for its fisheries to export fish and fish products to the United States. Fish and fish products from fisheries that fail to receive a comparability finding may not be imported into the United States.

To receive a comparability finding for an exempt or export fishery operating within the harvesting nation's exclusive economic zone (EEZ) and territorial sea, the high seas, or in the waters of another state, the harvesting nation must demonstrate it has prohibited the intentional mortality or serious injury of marine mammals in the course of commercial fishing operations in the fishery unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger; or that it has procedures to reliably certify that exports of fish and fish products to the United States are not the product of an intentional killing or serious injury of a marine mammal unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger.

The harvesting nation must also demonstrate that it has adopted and implemented, with respect to an export fishery, a regulatory program governing the incidental mortality and serious injury of marine mammals in the course of commercial fishing operations in its export fishery that is comparable in effectiveness to the U.S. regulatory program. The U.S. regulatory program governing the incidental mortality and serious injury of marine mammals in the course of commercial fishing operations is specified in the MMPA (*e.g.,* 16 U.S.C. 1386 and 1387) and its implementing regulations. To determine whether a harvesting nation maintains a regulatory program that is comparable in effectiveness to the U.S. regulatory program for a fishery, NMFS will examine whether the harvesting nation maintains a regulatory program that includes, or effectively achieves comparable results, as certain conditions specified in paragraph (h)(6)(iii) of the rule, subject to additional considerations specified in paragraph (h)(7) of the rule. The conditions specified in paragraph (h)(6)(iii) are features of the U.S. regulatory program.

Paragraph (h)(6)(iii) specifies different conditions that a harvesting nation must meet for the Assistant Administrator to issue a comparability finding for: Export fisheries operating within the EEZ or territorial waters of the harvesting nation, export fisheries operating within the jurisdiction of another state, and export fisheries operating on the high seas. The conditions specified in paragraph (h)(6)(iii) and additional considerations specified paragraph (h)(7) are summarized below.

For export fisheries operating within the EEZ or territorial waters of the harvesting nation, the conditions include:

1. Marine mammal stock assessments that estimate population abundance for marine mammal stocks in waters under its jurisdiction that are incidentally killed or seriously injured in the export fishery;

2. An export fishery register containing a list of all vessels participating in the export fishery under the jurisdiction of the harvesting nation, including the number of vessels participating, information on gear type, target species, fishing season, and fishing area;

3. Regulatory requirements (*e.g.,* including copies of relevant laws, decrees, and implementing regulations or measures) that include:

(a) A requirement for the owner or operator of vessels participating in the fishery to report all intentional and incidental mortality and injury of marine mammals in the course of commercial fishing operations; and

(b) A requirement to implement measures in export fisheries designed to reduce the total incidental mortality and serious injury of a marine mammal stock below the bycatch limit. Such measures may include: Incidental mortality and serious injury limits; careful release and safe-handling of marine mammals and gear removal; gear marking; bycatch reduction devices or avoidance gear (*e.g.,* pingers); gear modifications or restrictions; or time-area closures; and

(c) for transboundary stocks or any other marine mammal stocks interacting with the export fishery, any measures to reduce the incidental mortality and serious injury of that stock that are the same or are comparable in effectiveness to measures the United States requires its domestic fisheries to take with respect to that transboundary stock or marine mammal stock in the United States.

4. Implementation of monitoring procedures in export fisheries designed to estimate incidental mortality and serious injury of marine mammals in each export fishery under its jurisdiction, as well as estimates of cumulative incidental mortality and serious injury for marine mammal stocks in waters under its jurisdiction that are incidentally killed or seriously injured in the export fishery and other export fisheries with the same marine mammal stock, including an indication of the statistical reliability of those estimates;

5. Calculation of bycatch limits for marine mammal stocks in waters under its jurisdiction that are incidentally killed or seriously injured in an export fishery;

6. Comparison of the incidental mortality and serious injury of each marine mammal stock or stocks that interact with the export fishery in relation to the bycatch limit for each stock; and comparison of the cumulative incidental mortality and serious injury of each marine mammal stock or stocks that interact with the export fishery and any other export fisheries of the harvesting nation showing that these export fisheries:

(a) Do not exceed the bycatch limit for that stock or stocks; or

(b) Exceed the bycatch limit for that stock or stocks, but the portion of incidental marine mammal mortality or serious injury for which the exporting fishery is responsible is at a level that, if the other export fisheries interacting with the same marine mammal stock or stocks were at the same level, would not result in cumulative incidental mortality and serious injury in excess of the bycatch limit for that stock or stocks.

For export fisheries operating within the jurisdiction of another state the conditions include:

1. With respect to any transboundary stock interacting with the export fishery, any measures to reduce the incidental mortality and serious injury of that stock that the United States requires its domestic fisheries to take with respect to that transboundary stock; and

2. With respect to any other marine mammal stocks interacting with the export fishery while operating within the jurisdiction of the state, any measures to reduce incidental mortality and serious injury that the United States requires its domestic fisheries to take with respect to that marine mammal stock; and

3. For an export fishery not subject to management by a regional fishery management organization:

(a) An assessment of marine mammal abundance of stocks interacting with the export fishery, the calculation of a bycatch limit for each such stock, an estimation of incidental mortality and serious injury for each stock and reduction in or maintenance of the incidental mortality and serious injury of each stock below the bycatch limit. This data included in the application may be provided by the state or another source; and

(b) Comparison of the incidental mortality and serious injury of each marine mammal stock or stocks that interact with the export fishery in relation to the bycatch limit for each stock; and comparison of the cumulative incidental mortality and serious injury of each marine mammal stock or stocks that interact with the export fishery and any other export fisheries of the harvesting nation showing that these export fisheries do not exceed the bycatch limit for that stock or stocks; or that, if they do exceed the bycatch limit for that stock or stocks, the portion of incidental marine mammal mortality or serious injury for which the export fishery is responsible is at a level that, if the other export fisheries interacting with the same marine mammal stock or stocks were at the same level, would not result in cumulative incidental mortality and serious injury in excess of the bycatch limit for that stock or stocks; or

4. For an export fishery that is subject to management under an intergovernmental agreement or by a regional fishery management organization, implementation of marine mammal data collection and conservation and management measures applicable to that fishery required under any applicable intergovernmental agreement or regional fisheries management organization to which the United States is a party.

For an export fishery operating on the high seas under the jurisdiction of the harvesting nation or of another state:

1. Implementation in the fishery of marine mammal data collection and conservation and management measures applicable to that fishery required under any applicable intergovernmental agreement or regional fisheries management organization to which the United States is a party; and

2. Implementation in the export fishery of:

(a) With respect to any transboundary stock interacting with the export fishery, any measures to reduce the incidental mortality and serious injury of that stock that the United States requires its domestic fisheries to take with respect to that transboundary stock; and

(b) With respect to any other marine mammal stocks interacting with the export fishery while operating on the high seas, any measures to reduce incidental mortality and serious injury that the United States requires its domestic fisheries to take with respect to that marine mammal stock when they are operating on the high seas.

Additional Considerations

When determining whether to issue any comparability finding for a harvesting nation's export fishery the Assistant Administrator will also consider:

- U.S. implementation of its regulatory program for similar marine mammal stocks and similar fisheries (*e.g.*, considering gear or target species), including transboundary stocks governed by regulations implementing a marine mammal take reduction plan, and any other relevant information received during consultations;
- The extent to which the harvesting nation has successfully implemented measures in the export fishery to reduce the incidental mortality and serious injury of marine mammals caused by the harvesting nation's export fisheries to levels below the bycatch limit;
- Whether the measures adopted by the harvesting nation for its export fishery have reduced or will likely reduce the cumulative incidental mortality and serious injury of each marine mammal stock below the bycatch limit, and the progress of the regulatory program toward achieving its objectives;
- Other relevant facts and circumstances, which may include the history and nature of interactions with marine mammals in this export fishery, whether the level of incidental mortality and serious injury resulting from the fishery or fisheries exceeds the bycatch limit for a marine mammal stock, the population size and trend of the marine mammal stock, the population level impacts of the incidental mortality or serious injury of marine mammals in a harvesting nation's export fisheries, and the conservation status of those marine mammal stocks where available;
- The record of consultations with the harvesting nation, results of these consultations, and actions taken by the harvesting nation, including under any applicable intergovernmental agreement or regional fishery management organization, to reduce the incidental mortality and serious injury of marine mammals in its export fisheries; and
- Information gathered during any onsite inspection by U.S. government officials of a fishery's operations.
- For export fisheries operating on the high seas under an applicable intergovernmental agreement or regional fishery management organization to which the United States is a party, the harvesting nation's record of implementation of or compliance with measures adopted by that regional fishery management organization or intergovernmental agreement for data collection, incidental mortality and serious injury mitigation or the conservation and management of marine mammals; whether the harvesting nation is a party or cooperating non-party to such intergovernmental agreement or regional fishery management organization; the record of United States implementation of such measures; and whether the United States has imposed additional measures on its fleet not required by an intergovernmental agreement or regional fishery management organization.
- For export fisheries operating on the high seas under an applicable intergovernmental agreement or regional fisheries management organization to which the United States is not a party, the harvesting nation's implementation of and compliance with measures adopted by that regional fisheries management organization or intergovernmental agreement, and any additional measures implemented by the harvesting nation for data collection, incidental mortality and serious injury mitigation or the conservation and management of marine mammals and the extent to which such measures are comparable in effectiveness to the U.S. regulatory program for similar fisheries.

Issuance or Denial of a Comparability Finding

No later than November 30th of the calendar year when the exemption period or comparability finding is to expire, the Assistant Administrator will publish in the **Federal Register**, by harvesting nation, a notice of the harvesting nations and fisheries for which it has issued or denied a comparability finding and the specific fish and fish products that, as a result, are subject to import prohibitions.

Prior to publication in the **Federal Register**, the Assistant Administrator, in consultation with the Secretary of State and, in the event of a denial of a comparability finding, with the Office of the U.S. Trade Representative, shall notify each harvesting nation in writing of the fisheries of the harvesting nation for which the Assistant Administrator is:

- Issuing a comparability finding;
- Denying a comparability finding with an explanation for the reasons for the denial; and
- Specify the fish and fish products that will be subject to import prohibitions on account of a denial of a comparability finding and the effective date of such import prohibitions.

For a fishery that applied for and is unlikely to receive a comparability finding, NMFS will conduct a preliminary comparability finding consultation. NMFS, in consultation with the Secretary of State and the United States Trade Representative, will notify the harvesting nation prior to the notification and publication of the decision whether to issue or deny a comparability finding in the **Federal Register** that it is preliminarily denying the harvesting nation a comparability finding for the fishery, or terminating an existing comparability finding, and provide the harvesting nation with an opportunity to submit reliable information to refute this preliminary denial or termination of the comparability finding, and communicate any corrective actions taken since submission of its application to comply with the applicable conditions for a comparability finding. If a harvesting nation does not take action or the situation is not otherwise resolved by the time the Assistant Administrator has made all comparability findings, issued such findings in writing to the harvesting nation and published them in the **Federal Register**, the fishery will not receive and will have to reapply for a comparability finding. NMFS will take the information received and the results of such consultations into consideration in finalizing its comparability finding for the fishery. A preliminary denial or termination of a comparability finding shall not result in import prohibitions.

Duration and Renewal of a Comparability Finding

For those fisheries receiving a comparability finding, such finding will remain valid for 4 years or for such other period as the Assistant Administrator may specify. To seek renewal of a comparability finding, every 4 years, the harvesting nation must submit to the Assistant Administrator an application by March 1 of the year when the comparability finding is due to expire, requesting a comparability finding for the fishery and providing the same documentary evidence required for the initial comparability finding, including documentary evidence of any measures they have implemented to reduce the incidental mortality and serious injury of marine mammals in its export fishery that are comparable in effectiveness to the U.S. regulatory program, in particular by maintaining a regulatory program that includes, or effectively achieves comparable results as the features of the U.S. regulatory program described in paragraph (h)(6)(iii) of the rule. The Assistant Administrator may request the submission of additional supporting documentation or verification of statements made to support a comparability finding. If a harvesting nation's fishery does not receive a comparability finding during the renewal process, import restrictions will be applied.

Import Restrictions

If the Assistant Administrator denies or terminates a comparability finding for a fishery, the Assistant Administrator, in cooperation with the Secretaries of the Treasury and Homeland Security, will identify and prohibit the importation of fish and fish products into the United States from the harvesting nation caught or harvested in that fishery. Any such import prohibition will become effective 30 days after publication of the **Federal Register** notice announcing the comparability finding and shall only apply to fish and fish products caught or harvested in that fishery. Any import prohibition imposed under this rule will remain in effect until the harvesting nation reapplies and receives a comparability finding for that fishery.

Duration of Import Restrictions and Removal of Import Restrictions

NMFS, in consultation with the Department of State and the Office of the United States Trade Representative, will consult with harvesting nations that failed to receive a comparability finding for a fishery, provide the reasons for the denial, and encourage the harvesting nation to take corrective action and reapply for a comparability finding. A harvesting nation may, at any time, reapply for or request the reconsideration of a denied comparability finding for a fishery, and submit documentary evidence to the Assistant Administrator in support of such application or request. Upon issuance of a comparability finding and notification to the harvesting nation, the Assistant Administrator, in cooperation with the Secretaries of the Treasury and Homeland Security, will publish notification of the removal of the import prohibitions for that fishery, effective on the date of publication in the **Federal Register**.

Certification of Admissibility

If fish or fish products are subject to import prohibitions from a harvesting nation's fishery, the Assistant Administrator, to avoid circumvention of or to facilitate enforcement of import prohibitions, may require and publish in the **Federal Register** the requirement that the same or similar fish or fish products from the harvesting nation's exempt or export fisheries that are not subject to any import prohibitions (*i.e.,* those that have received a comparability finding) be accompanied by certification of admissibility or electronic equivalent filed through the National Marine Fisheries message set required in the International Trade Data System.

The Assistant Administrator will notify the harvesting nation of the fisheries and the fish and fish products required to be accompanied by a certification of admissibility and provide the necessary documents and instruction. The Assistant Administrator in cooperation with the Secretaries of Treasury and Homeland Security, shall as part of the **Federal Register** notice referenced above, publish by harvesting nation the fish and fish products required to be accompanied by a certification of admissibility. Any requirement for a certification of admissibility shall be effective 30 days after the publication of such notice in the **Federal Register**.

Discretionary Review of Comparability Findings

In addition, the Assistant Administrator may reconsider a comparability finding and may terminate a comparability finding if he or she determines that the fishery no longer meets the applicable conditions for a comparability finding. Given that comparability findings are made every four years, this provision allows the Assistant Administrator to consider the progress report submitted by a harvesting nation, information collected by NMFS, or information provided by entities including RFMOs, nongovernmental organizations, and the public, to determine whether the exempt or export fishery is continuing to meet the conditions for a comparability finding. After such review or reconsideration, and after consultation with the harvesting nation (preliminary comparability finding), a comparability finding can be terminated if the Assistant Administrator determines that the basis for the comparability finding no longer applies. The Assistant Administrator shall notify in writing the harvesting nation and publish notice in the **Federal Register**, of the termination and the specific fish and fish products that as a result are subject to import prohibitions.

Intermediary Nations

To prevent any fish or fish products subject to import prohibitions authorized by this rule from being imported into the United States from any intermediary nation, including a processing nation, NMFS includes provisions for intermediary nations. Under these provisions, NMFS will identify intermediary nations that may import, and re-export to the United States, fish and fish products from a fishery subject to an import prohibition applied under this rule and notify such nations of the fish and fish products for which NMFS has identified them. Such intermediary nations must in turn certify that it does not import such fish and fish products from a harvesting nation's fisheries that are subject to import prohibitions applied under this rule or that it has procedures to reliably certify that its exports of fish and fish products to the United States do not contain such fish or fish products caught or harvested in a fishery subject to an import prohibition. Those procedures can be implemented globally or on a shipment-by-shipment basis and could include, for example, prohibiting the import of the prohibited fish and fish products, prohibiting the export of such product to the United States, or maintaining a tracking and verification scheme and including certification of such scheme on a shipment-by-shipment basis. The steps that the Assistant Administrator and the intermediary nation must follow are detailed in the preamble to the proposed rule and the regulatory text below and are not repeated in this summary.

For an intermediary nation that NMFS has identified as a nation that may import, and re-export to the United States, fish or fish products caught or harvested in a fishery subject to an import prohibition and that cannot certify that it does not import such fish or fish products caught or harvested in the fishery, such fish and fish products from that intermediary nation will not be imported into the United States, if the Assistant Administrator determines that the intermediary nation does not have procedures to reliably certify that exports of such fish and fish products from the intermediary nation to the United States do not contain fish or fish products caught or harvested in the fishery subject to the import prohibition. No fish or fish products caught or harvested in a fishery subject to an import prohibition under the rule may be imported into the United States from any intermediary nation. The Assistant Administrator, in cooperation with the Secretaries of the Treasury and Homeland Security, will publish a notice in the **Federal Register** announcing the prohibited fish and fish products exported from the intermediary nation to the United States that are of the same species as, or similar to, fish or fish products subject to an import prohibition.

The Assistant Administrator will review determinations under this paragraph upon the request of an intermediary nation. Such requests must be accompanied by specific and detailed supporting information or documentation indicating that a review or reconsideration is warranted. Based upon such information and other relevant information, the Assistant Administrator may determine that fish and fish products from the intermediary nation should no longer be subject to an import prohibition. Based on that determination, the Assistant Administrator, in cooperation with the Secretaries of the Treasury and Homeland Security, may lift an import prohibition under this paragraph and publish notification of such action in the **Federal Register**.

Progress Report

To review the harvesting nation's ongoing progress in developing and implementing its regulatory program for its export fisheries, NMFS will require progress reports every four years. The first report will be submitted two years prior to the end of the exemption period and then every four years thereafter, on or before July 31. In this report, the harvesting nation will present an update on actions taken over the previous two years to develop, adopt, and implement its regulatory program, as well as information on the performance of its export fisheries in reducing incidental mortality and serious injury of marine mammals. This progress report should detail the methods used to obtain the information contained in the progress report and should include a certification by the harvesting nation of its accuracy and authenticity. The report allows NMFS to monitor the harvesting nation's efforts in its export fisheries and to work closely with a harvesting nation to ensure they meet and continue to meet the conditions for a comparability finding.

International Cooperation and Assistance

Throughout implementation of this rule, NMFS will engage in consultations with harvesting nations. Consistent with existing authority under the MMPA (16 U.S.C. 1378), and contingent on annual appropriations, NMFS may provide assistance to harvesting nations to aid in compliance with this rule. Assistance activities may include cooperative research on marine mammal assessments (*e.g.,* designing vessel surveys and fishery observer programs) and development of techniques or technology to reduce incidental mortality and serious injury (*e.g.,* fishing gear modifications), as well as efforts to improve governance structures or enforcement capacity (*e.g.,* training). NMFS would also facilitate, as appropriate, the voluntary transfer of appropriate technology on mutually-agreed terms to assist a harvesting nation in qualifying its export fishery for a comparability finding and in designing and implementing appropriate fish harvesting methods that minimize the incidental mortality and serious injury of marine mammals.

Emergency Rulemaking

During the five-year interim exemption, NMFS may consider emergency rulemaking to ban imports of fish and fish products from an export or exempt fishery having or likely to have an immediate and significant adverse impact on a marine mammal stock. Under this rule, "U.S. regulatory program" is defined as the regulatory program governing the incidental mortality and serious injury of marine mammals in the course of commercial fishing operations as specified in the MMPA and its implementing regulations. The U.S. regulatory program at section 118(g) of the MMPA (16 U.S.C. 1387(g)) contains provisions for emergency rulemaking for U.S. domestic fisheries that are having or likely to have an immediate and significant adverse impact on a marine mammal stock. NMFS would likewise consider an emergency rulemaking for an export or exempt fishery having or likely to have an immediate and significant adverse impact on a marine mammal stock interacting with that fishery. Before NMFS initiates an emergency rulemaking, NMFS would consult with the nation with the relevant fishery and urge it to take measures to reduce the incidental mortality and serious injury and effectively mitigate such immediate and significant adverse impact on the marine mammal stock(s). If the harvesting nation fails to take measures to reduce the incidental mortality and serious injury and mitigate such immediate and significant adverse impact, NMFS would consider prohibiting the imports of fish and fish products from the relevant export or exempt fishery through notice and comment rulemaking.

The emergency regulations or measures allow for timely treatment of cases where the usual process and timeframe could result in unacceptable risks to the affected marine mammal stock or species. Logically, such risks would result either from very small populations where any incidental mortality could result in increased risk of extinction or larger populations with substantial mortality that could become very small populations within the timeframe taken by the standard management process; in either situation these cases represent an unacceptable ecological risk.

Responses to Comments on the Proposed Rule

NMFS received comments on the proposed rule from fishing industry groups, including fish importers, processors, and trade organizations, environmental non-governmental organizations (NGOs), private citizens, the Marine Mammal Commission, and foreign governments.

General Comments

NMFS received more than 92,000 comment letters and petitions from private citizens through environmental NGOs supporting procedures to implement the MMPA import provisions. Specifically, the majority of commenters expressed their support for the comparability finding process and the application of trade measures. NMFS received numerous comments asking the agency to adopt the strongest measures possible to reduce marine mammal bycatch to conserve these resources and level the playing field for U.S. fishermen. Several commenters supported NMFS holding other nations to the same rigorous and strict standards to which U.S. fishermen are subject.

Several comments received were not germane to this rulemaking and are not addressed in this section. These comments include actions outside the scope of the statutory mandate or actions covered under other rulemakings. Comments received are available on the Internet at *http://www.regulations.gov* under Docket ID NOAA–NMFS–2010–0098. In the following section, NMFS responds to the comments applicable to this rulemaking.

Definitions

Comment 1: Numerous commenters recommended expanding the definition of "Fish and Fish Products" to encompass all fish products including highly processed products and expressed concern that the proposed exclusion of highly processed product has the potential to exempt from this rule a significant portion of U.S. imports from, or worse encourage exporters to increase export of process product to evade compliance with the MMPA.

Response: NMFS disagrees that the proposed exemption would incentivize businesses to increase production of highly processed products over traditional product forms in order to circumvent the requirements of the rule. However, NMFS is modifying the rule to remove language excluding highly processed products from the definition of fish and fish products. The rationale for doing so is provided below in "Changes From Proposed Action". If a fishery of a harvesting nation fails to receive a comparability finding for a fishery, fish and fish products caught or harvested in that fishery will be subject to an import prohibition, including highly processed fish products containing fish caught or harvested in the fishery. This revision of the definition of fish and fish products to remove the exclusion for highly processed products also has implications for the provision of this rule that allows the Assistant Administrator to require that the same or similar fish and fish products caught or harvested in another fishery of the harvesting nation and not subject to the prohibition be accompanied by a certification of admissibility and therefore has clarified that provision as described "Changes to the Proposed Action" below.

Comment 2: Several commenters disagree that the MMPA authorizes NMFS to exempt certain fish products from this regulation. Further, exempting this subcategory of fish products runs contrary to the MMPA's accompanying regulations under 50 CFR 216.24 for "tuna product" which explicitly include processed items such as "fish pastes," and "fish balls, cakes, and puddings."

Response: For the reasons explained in the "Changes from Proposed Action" section, NMFS is modifying the rule to remove language that would exclude highly processed products from the definition of fish and fish products.

Comment 3: One commenter suggested that the term "remote" be clarified within the definition of an exempt fishery.

Response: NMFS believes no further clarification of the term "remote" is needed. The definition clearly indicates that a commercial fishing operation with a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other foreign fisheries exporting fish and fish products to the United States causes the annual removal of:

(1) Ten percent or less of any marine mammal stock's bycatch limit; or

(2) More than 10 percent of any marine mammal stock's bycatch limit, yet that fishery by itself removes 1 percent or less of that stock's bycatch limit annually.

Comment 4: One commenter questioned why NMFS chose only two categories of fisheries, exempt and export, as opposed to the 3 categories of fisheries applicable to U.S. fisheries, stating that three categories of fisheries would allow the fisheries with the highest marine mammal bycatch to be excluded from comparability findings by the harvesting nations until those fisheries could be brought into compliance with the comparability finding requirements.

Response: Having only two categories simplifies and streamlines the development of the List of Foreign Fisheries. The regulatory program governing U.S. fisheries requires management action for Category 1 and 2 fisheries; this simplified approach is more practical for a harvesting nation developing regulatory programs to reduce marine mammal bycatch in its export fisheries. Nonetheless, nothing prevents the harvesting nation from prioritizing the export fisheries to which it will devote resources in developing regulatory programs for reducing marine mammal bycatch. Export fisheries not included in the application for a comparability finding and not governed by the harvesting nation's regulatory program will not receive a comparability finding and fish and fish products from those fisheries will be subject to import prohibitions.

Comment 5: One commenter questioned whether the rule would address the bycatch of marine mammals that migrate from waters under the jurisdiction of one nation into U.S. waters?

Response: Yes, and NMFS has specifically defined "transboundary stock" as a marine mammal stock occurring in the: (1) Exclusive economic zones or territorial sea of the United States and one or more other States; or (2) Exclusive economic zone or territorial sea of the United States and on the high seas. A harvesting nation with bycatch of a transboundary stock in an export fishery must develop a regulatory program comparable in effectiveness to the U.S. regulatory program for that transboundary stock.

Comment 6: One commenter stated it is unclear why NMFS distinguishes between U.S. transboundary and non-transboundary stocks; and there is no reason NMFS should limit the application of this rule to U.S. stocks.

Response: NMFS is not limiting the application of this rule to U.S. stocks. Because NMFS has developed regulatory measures for its domestic commercial fisheries with incidental mortality and serious injury of some transboundary stocks and shares management authority for such stocks with other harvesting nations, NMFS emphasizes the consideration of transboundary stocks in the comparability finding conditions in the rule. Because NMFS shares conservation and management for these stocks with other nations, there is a greater need for a harvesting nation to demonstrate that it has implemented a regulatory program for its export fisheries (whether operating in its EEZ, territorial sea, or on the high seas) that is comparable in effectiveness to the U.S. regulatory program for such transboundary stocks, especially for transboundary stocks governed by specific requirements of the U.S. regulatory program, including marine mammal take reduction plans.

Comment 7: The Marine Mammal Commission recommended that NMFS include a definition of the term "ocean mammals" and that it be defined as equivalent to the statutory definition of the term "marine mammal."

Response: For this rule, NMFS considers the terms "marine mammal" and "ocean mammal" to be equivalent.

Comment 8: A commenter noted that NMFS defines a commercial fishing operation to include aquaculture activities that interact with or occur in marine mammal habitat (50 CFR 216.24(h)(3)(i)(A)). The commenter recommended that NMFS clearly state the commercial aquaculture operations that would not be: Impacted by the final rule, included in the List of Foreign Fisheries and required to have a comparability finding to export to the U.S.

Response: This rule applies to aquaculture facilities sited in marine mammal habitat that have or may incidentally or intentionally kill and seriously injury marine mammals. NMFS does not intend to include aquaculture facilities that are freshwater-based or are not located in marine mammal habitat.

Application of This Rule

Comment 9: One commenter asserts the purpose of this rule is to punish nations that continue to hunt whales while another urged NMFS to prohibit importation of fish products from Japan until they ceased their drive fisheries for dolphins.

Response: NMFS disagrees. This rule does not apply to commercial and subsistence whaling or drive fisheries for marine mammals. Subsistence and commercial whaling are governed under the other provisions of the MMPA, other U.S. laws, and the International

Convention for the Regulation of Whaling.

Comment 10: One nation asserted the U.S. does not have the authority to regulate marine mammals within another nation's coastal waters, except for those species included under an international management framework such as the Convention on International Trade in Endangered Species (CITES).

Response: NMFS is not attempting to regulate marine mammals within a nation's coastal waters. NMFS is prohibiting the importation of fish and fish products into the United States from a fishery that has not been issued comparability findings and establishing criteria for such comparability finding. The rule does require an export fishery operating under the jurisdiction of a harvesting nation within its EEZ (or the equivalent) or territorial sea, to develop and maintain a regulatory program comparable in effectiveness to the U.S. regulatory program in order to obtain a comparability finding. The harvesting nation must develop and implement such a regulatory program only if it wishes to export fish and fish products to the United States.

Comment 11: One nation commented that the rule should not be applied to all marine mammals, stating the proposed rule does not take into account that many marine mammal species are abundant and that incidental injury or mortality of some species will have little or no effect on their respective populations and recommended that NMFS list the specific species of concern, rather than all marine mammals generally.

Response: NMFS disagrees. The MMPA requires that the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. This goal includes all marine mammals and does not differentiate based on level of abundance. The MMPA does prioritize action for those stocks defined as "strategic," and the agency hopes that nations would also prioritize action for threatened and endangered species and those for which bycatch is unsustainable.

Aquaculture

Comment 12: Numerous commenters supported inclusion of aquaculture operations under the rule. The Marine Mammal Commission recommended that foreign aquaculture operations should be subject to the import provisions under the MMPA recognizing that aquaculture operations interact with marine mammals in ways that can result in intentional or incidental mortality or serious injury. Additionally, several commenters called for an immediate investigation into lethal practices (*e.g.* intentional shooting of depredating seals) by the global salmon aquaculture industry, while others recommended an immediate import prohibition of salmon harvested by aquaculture operations that engage in such practices, stating it was a violation of the MMPA to import the product.

Response: The regulatory definition of a commercial fishing operation includes aquaculture, and NMFS will classify foreign aquaculture operations considering both intentional and incidental mortality and serious injury according to the requirements of this rule. When making comparability finding determinations for farmed salmon imports, NMFS will evaluate measures to reduce interactions, prohibit intentional, and reduce incidental mortality and serious injury of marine mammals in foreign aquaculture operations as compared to the U.S. standards for aquaculture facilities (*e.g.,* use of predator nets and the prohibition on intentional killing).

Comment 13: One nation asked what standard or measures the United States has implemented in its aquaculture facilities to avoid marine mammal bycatch, and what marine mammal mortality and serious injury rates are associated with U.S. aquaculture operations.

Response: U.S. marine aquaculture fisheries are currently Category III fisheries under the MMPA and are regulated under the regulations implementing the MMPA section 118 provisions governing the incidental take of marine mammals in all U.S. commercial fishing operations. These regulations also include provisions that prohibit the intentional killing and serious injury of marine mammals in commercial fishing operations. No U.S. marine aquaculture fishery is currently included under any marine mammal take reduction plan which would specify additional regulations specific to that particular aquaculture fishery (*e.g.,* California white seabass enhancement net pens). Annual estimates of marine mammal incidental mortality and serious injury resulting from aquaculture operations, when they are reported, are published in the annual marine mammal stock assessment reports.

Five-Year Interim Exemption Period

Comment 14: The majority of commenters, including private citizens and environmental NGOs, opposed the five-year exemption period, stating several species may become extinct within that timeframe, that nations have had a 43-year de facto exemption, that some nations and fisheries can comply in a shorter timeframe, and that an exemption period of that length weakens the incentive for a nation to develop the necessary infrastructure, much less the political and economic will to satisfy the rule's requirements. Further, some commenters assert that the MMPA does not authorize such an exemption. These commenters recommended exemption periods of 1 to 3 years, immediate implementation of a prohibition on intentional killing and serious injury, or adoption of emergency regulations for species of particular conservation concern. Numerous commenters stated that if the five-year exemption period is retained, provisions should be put in place requiring harvesting nations to demonstrate in the interim that they are making a good faith effort to comply with the rule.

Response: NMFS will retain the five-year interim exemption because we believe that this exemption is needed to provide nations with adequate time to assess marine mammal stocks, estimate bycatch, and develop regulatory programs to mitigate that bycatch. The progress report is NMFS' means to determine if nations are making a good faith effort to comply with the rule. Moreover, nothing in the rule prevents a nation from implementing a bycatch reduction regulatory program and seeking a comparability finding during the five-year exemption period.

Comment 15: The Marine Mammal Commission asserts the MMPA import provision is an ongoing, long-standing statutory requirement, and it does not see a legal basis for deferring implementation. To the extent that any delay can be countenanced, it should be kept to the absolute minimum necessary to secure the required information from exporting countries. The Marine Mammal Commission recommends that NMFS provide additional justification, including a legal analysis explaining why imports of fish and fish products need not be banned until the exporting countries provide the "reasonable proof" required under section 101(a)(2)(A), if it decides to defer implementation as proposed. NMFS also should explain why a shorter phase-in is not possible.

Response: NMFS has concluded that a five-year exemption period is permissible and has provided the rationale for such in the above response to comment 14 and the preamble to the proposed rule (See August 11, 2015 80 FR 48172).

Comment 16: The Marine Mammal Commission recommended that NMFS establish a shorter exemption period for fisheries that (1) have bycatch of marine mammals that are critically endangered; (2) involve marine mammal stocks for which ample information already exists on their status and bycatch levels and for which monitoring and bycatch mitigation measures are already well developed or could be quickly established; or (3) are already subject to RFMO measures for monitoring and mitigating marine mammal bycatch. If NMFS proceeds to allow a five-year exemption period, the Marine Mammal Commission recommended that harvesting nations be required to take immediate steps once the final List of Foreign Fisheries is published to institute programs that require all fishermen engaged in fisheries that might take marine mammals to register with the appropriate national agency to identify their target catch and gear type, to report all marine mammals taken, and to carry observers when asked to do so.

Response: The intent of the exemption period is to provide nations with the time needed to assess marine mammal stocks and estimate and mitigate bycatch in their export fisheries. To meet these objectives nations will have to implement registries, and monitoring programs of the type recommended by the Marine Mammal Commission. NMFS believes the progress report will provide critical information on a nation's actions toward developing its regulatory program so it might receive a comparability finding for its fisheries.

Comment 17: Several commenters including the Marine Mammal Commission recommended that in lieu of decreasing the timeframe for the five-year exemption period, NMFS consider implementing an emergency import ban to protect species facing "significant adverse" impacts during the delay period. The Marine Mammal Commission noted the domestic interim exemption included an emergency rulemaking provision that directed NMFS to issue regulations "to prevent to the maximum extent practicable any further taking" of marine mammals in a fishery if information being collected under the interim program indicated that incidental taking was having "an immediate and significant adverse impact" on any marine mammal stock.

Response: NMFS acknowledges that the domestic interim exemption included emergency provisions, and believes the adoption of such measures would add a layer of precaution. The emergency provisions are included within the U.S. standards to ensure that the United States can move quickly to engender protections for highly at-risk species. See the preamble for the discussion of emergency rulemaking during the interim exemption period and comparability finding period.

Comment 18: Processors and nations supported the exemption period stating that the majority of the harvesting nations exporting fish and fish products to the United States are not as advanced as the U.S. in developing, implementing, and enforcing fishery or protected species conservation and management rules; and in cases where data deficiencies exist, five years will likely be too short of a period to develop and apply rules for flag nation fleets and/or for fishing operations within an EEZ. These commenters recommended a ten-year exemption period, with one-year renewable extensions to the initial exemption period or flexibility in the timeline to avoid a disruption in trade that could arise if foreign fisheries fail to receive a comparability finding simply because they or even NMFS could not fulfill all the provisions of the rule within a non-extendable timeline.

Response: NMFS disagrees that the exemption period should be increased or have one-year renewable extensions. NMFS considers the five-year exemption period to be sufficient time for nations to develop regulatory programs for their fisheries subject to this rule.

United States Regulatory Program

Comment 19: Two nations requested information on incidental bycatch of marine mammals taken in U.S. fisheries and stock abundance estimates. One nation stated that it is important that NMFS provide all harvesting nations with sufficient information and suggested that NMFS first provide the contents of existing regulations and rules for conservation and management of marine mammals that the U.S. has already implemented as well as existing bycatch data.

Response: This information is readily available. Information on marine mammal bycatch and the U.S. regulatory program and stock assessments can be found at *http://www.nmfs.noaa.gov/pr/interactions/trt/marine_mammal_take_reduction_program.html* and *http://www.nmfs.noaa.gov/pr/sars/species.htm,* respectively. In addition, when NMFS provides the List of Foreign Fisheries and the harvesting nation's export and exempt fisheries, NMFS will also provide harvesting nations with general information on the regulatory program governing the incidental mortality and serious injury of marine mammals in the course of commercial fisheries and specific regulations applicable to their fisheries.

Comment 20: Several commenters recommended that NMFS adopt a bycatch standard that fully mirrors the U.S. standard in the MMPA including incorporating the MMPA's goal of reducing incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and injury rate (ZMRG).

Response: The rule defines *U.S. regulatory program* as the regulatory program governing the incidental mortality and serious injury of marine mammals in the course of commercial fishing operations as specified in the MMPA and its implementing regulations. NMFS is not ignoring the ZMRG standard in the rule; it has prioritized reducing bycatch to sustainable levels (*e.g.* below the bycatch limit) and will consider the application of the ZMRG, or metrics/measures comparable in effectiveness to ZMRG, to foreign fisheries providing the same flexibility to foreign fisheries as it has applied to analogous U.S. fisheries that have not met ZMRG.

Comment 21: One commenter stated that, for marine mammal species that are listed as threatened or endangered under the ESA, NMFS may only authorize incidental mortality and serious injury from all commercial fisheries that have a "negligible impact" on the listed stocks. NMFS has not addressed section 101(a)(5)(E) or the negligible impact standard in its proposed rule.

Response: Section 101(a)(5)(E) is one of the links to the ESA to ensure threatened and endangered species are adequately addressed in fisheries. One of the requirements in section 101(a)(5)(E) is to comply with monitoring and take reduction plans, which are the same elements included in the comparability finding process for this rule.

List of Foreign Fisheries

Comment 22: Several commenters asked whether foreign fishery classifications would apply to a nation's entire fishery based on species, or whether there would be sub-classifications based on specific geographic areas and frequency of marine mammal interactions.

Response: NMFS intends to work with harvesting nations to adopt classifications of fisheries that, to the extent practicable, reflect gear type, geographic or management areas, and frequency of interaction when warranted.

Comment 23: One commenter stated the regulatory language must be clear that imports of fish and fish products from a commercial fishing operation not on the List of Foreign Fisheries and not covered under this regulatory process must be banned.

Response: NMFS disagrees. A fishery must be classified as export or exempt. The nation must then apply for and receive a comparability finding for those fisheries otherwise the fish and fish products from that fishery cannot be imported into the United States.

Comment 24: Several commenters raised concern and sought clarification on the discretionary reasoning and factors that the Assistant Administrator may use to classify "exempt" or "export" fisheries absent adequate scientific information provided by the harvesting nation about the frequency and/or magnitude of incidental mortalities. Another commenter opposes the approach of classification by analogy, asserting the diverse range of gear types and configurations and differences in marine mammal distribution and behavior in various geographic locations. The Marine Mammal Commission recommended that, if NMFS finds that available information is not adequate to determine with sufficient reliability the frequency with which a foreign fishery takes marine mammals and from what stocks, the List of Foreign Fisheries identify that fishery as an export fishery until such information becomes available.

Response: To classify fisheries as exempt or export fisheries in the absence of information from the harvesting nation, NMFS will evaluate information concerning factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, the species and distribution of marine mammals in the area, and will classify fisheries by analogy with similar U.S. or foreign fisheries and gear types interacting with similar marine mammal stocks. Where no analogous fishery or other reliable information exists demonstrating that the likelihood of incidental mortality and serious injury is remote, NMFS will classify the commercial fishing operation as an export fishery until such time as the harvesting nation provides the reliable information to properly classify the fishery or, in the course of preparing the List of Foreign Fisheries, such information becomes readily available to the Assistant Administrator.

Comment 25: One commenter raised a concern about using readily available information stating NMFS should not reward a harvesting nation with a finding of exemption if that nation has not made a good-faith effort to support such a finding. The Marine Mammal Commission was troubled that the rule could be interpreted as placing the onus on NMFS to gather the necessary information.

Response: Consistent with section 101(a)(2)(A) of the MMPA, this rule places the burden of proof on the harvesting nation to supply the information to classify its fisheries. However, through the implementation of other regulations and participation in RFMOs, NMFS may have readily available information that it can use to supplement its evaluation and classification.

Comment 26: One commenter sought guidance on whether depredation by marine mammals on fish such as albacore captured on longlines can be regarded as interactions under the proposed rule.

Response: This rule addresses mortality and injury of marine mammals in the course of commercial fishing operations. Depredation in and of itself will not be considered for the purposes of this rule unless the outcome of that depredation is mortality or serious injury.

Application and Duration of a Comparability Finding

Comment 27: Several commenters opposed having the comparability finding being valid for four years noting that, in the interim, changes in fishing operations, regulations, and enforcement can all affect compliance with the conditions of a comparability finding. Some commenters suggested that comparability findings be renewed annually, others suggested that NMFS shorten the time that comparability findings are valid, to more closely align with the process to issue permits for the incidental take of threatened and endangered species by domestic commercial fisheries (*e.g.* three years). While no commenters supported issuing comparability findings lasting longer than 4 years, some stated the regulation should explicitly state that the Administrator's discretion on timing may not extend beyond 4 years.

Response: NMFS maintains that four years is an appropriate duration for a valid comparability finding. The rule provides adequate oversight during the time when a comparability finding is in effect by requiring harvesting nations to submit a progress report half way through the four-year period that comparability findings are in effect, and by providing the Assistant Administrator with the discretion to reconsider, at any time throughout the four year effective period, a comparability finding based on new information.

Intentional Killing and Serious Injury

Comment 28: The majority of commenters supported the prohibition on intentional mortality or serious injury of marine mammals in foreign commercial fishing operations as a condition for receiving a comparability finding. Several commenters noted that because the MMPA prohibits "the intentional lethal take of any marine mammal" by domestic commercial fishing operations, this is the clearest standard applicable to domestic commercial fisheries and as such must be applied to foreign commercial fisheries exporting fish and fish products to the United States.

Response: NMFS agrees that the rule should cover intentional mortality and serious injury and has retained, from the proposed rule, the provisions concerning intentional mortality and serious injury of marine mammals in the final rule.

Comment 29: Several commenters noted that when Congress granted U.S. fisheries an interim exemption from MMPA's take ban in 1988, Congress *maintained* a strict prohibition on the "intentional lethal taking" of (a) any Steller sea lion, (b) any cetacean, and (c) any marine mammals from a depleted stock (*i.e.,* ESA-listed species or stocks below Optimum Sustainable Population). 16 U.S.C. 1383a(b)(2)(C). Therefore, these commenters were of the view that, if NMFS adopts an exemption period, the agency should institute an analogous ban on intentional take comparable to that in the interim exemption during the exemption period.

Response: NMFS acknowledges that the interim exemption under the MMPA included a ban on the intentional lethal taking and that ban did not include all species or stocks of marine mammals due to species-specific conservation concerns relative to U.S. commercial fisheries at the time. The species-specific intentional lethal taking prohibition of the interim exemption does not include all marine mammals. Requiring harvesting nations to implement immediately a prohibition on the intentional mortality and serious injury on all or only some marine mammals, creates two problems. First, the application of such a piece-meal prohibition on intentional lethal take may not realize the same conservation benefit internationally that it did in the

United States. For example, data indicate that much of the intentional mortality and serious injury of pinnipeds involves species other than Steller sea lions, which were included in the interim exemption prohibition. Second, it is not feasible to require such a prohibition immediately as nations need sufficient time to institute decrees, laws, or regulations to prohibit the intentional mortality and serious injury of marine mammals.

Comment 30: The Marine Mammal Commission and other commenters expressed concern with the option that would allow imports of fish and fish products to the United States from fisheries in which it is permissible to kill marine mammals intentionally, as long as no marine mammals were killed or seriously injured in catching or raising the particular fish being exported to the United States. The Marine Mammal Commission stated that this is inconsistent with U.S. domestic standards for aquaculture and other fisheries, and provides a significant loophole for aquaculture operations around the world to circumvent the rule's requirements. It also presents significant enforcement problems, both in terms of monitoring whether any marine mammals were intentionally killed or injured in raising or harvesting the fish products and in differentiating seafood that can be imported from that which is banned. One commenter stated the statute does not explicitly authorize NMFS to create such a bifurcated regime, and there exists no general administrative power to create exemptions to statutory requirements based upon the agency's perceptions of costs and benefits. The Marine Mammal Commission and others recommended that NMFS require an outright prohibition on intentional mortality and serious injury of marine mammals in the course of commercial fishing as a condition to be met before any fishery, including an exempt fishery, could receive a comparability finding, and that the alternative provided by the second option be dropped.

Response: For implementation and enforcement purposes, NMFS' preference is that a nation demonstrate it has prohibited the intentional mortality or serious injury of marine mammals in the course of commercial fishing operations in exempt and export fisheries unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger. Harvesting nations may implement this provision by either instituting a law, regulation, or licensure or permit condition applicable to its export and exempt fisheries that prohibits the intentional killing or serious injury of marine mammals in the course of commercial fishing operations. Section 102(c)(3) only applies to imports of fish caught in a manner proscribed by the Secretary of Commerce. The alternative to the outright prohibition requires a harvesting nation to submit documentary evidence demonstrating that it has procedures to reliably certify that its exports of fish and fish products to the United States are not the product of the intentional killing or serious injury of marine mammals. NMFS expects that such procedures would include certification programs and tracking and verification schemes. For NMFS to consider that such a scheme can "reliably" certify their claims, the documentary evidence submitted by a harvesting nation must include tracking, verification, and chain of custody procedures ensuring, throughout the entire chain of commerce from the farms, to the packers, to the distributers, and finally to the ultimate importer — the ability to consistently segregate fish caught without intentional mortality and serious injury of marine mammals. This mirrors traceability requirements for seafood imports as described in the proposed seafood traceability implementing regulations (81 FR 6210, February 5, 2016).

Stock Assessments

Comment 31: Several nations raised concerns that for some species of marine mammals (such as rare species or species with wide distribution ranges), abundance estimates may be inadequate or lacking and that requiring governments to undertake such assessments is burdensome. One nation recommended that NMFS provide a specific treatment when data for marine mammals is not available and where the generation of such data would entail high and disproportionate costs.

Response: NMFS will consider all data, including abundance estimates, provided in a harvesting nation's application for a comparability finding for an export fish in light of the U.S. implementation of its stock assessment program for the same or similar marine mammal stocks and its bycatch mitigation measures for similar fisheries.

Bycatch Limits

Comment 32: Several nations requested clarification on the calculation of bycatch limits. One nation asked how the bycatch limit compares to thresholds based on the scientific advice provided by the International Council for the Exploration of the Seas (ICES) and the Institute of Marine Research. Other commenters asked for examples of what constitutes a comparable equation. Another commenter recommended that NMFS rigorously define the standards applicable to determining whether an equation or bycatch estimation method is "comparable" including by stipulating appropriate and precautionary, recovery factors in the PBR equation.

Response: In addition to the U.S. Potential Biological Removal (PBR) level, there are several bycatch limit calculations that could be considered comparable formulae; these include the Catch Limit Algorithm and the conservation objective of the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS). For example, the conservation objective for harbor porpoise set under ASCOBANS calls for all anthropogenic mortality to be reduced to less than 1.7% of the best available estimate of abundance. ASCOBANS has subsequently reduced that further to less than 1% of the best available estimate of abundance.

PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The PBR level is the product of the following factor: (a) The minimum population estimate of the stock; (b) one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and (c) a recovery factor of between 0.1 and 1.0. The following guidelines apply to PBR elements:

- Minimum population estimate or Nmin is defined as the lower 20th percentile of a log-normal distribution according to Nmin = N/exp(0.842 * (ln(1+CV(N)2))1/2), where CV(N) is the coefficient of variation of the stock's abundance.
- Default values of the maximum theoretical or estimated net productivity or Rmax are used when stock-specific values are not available: 0.12 (pinnipeds and sea otters) and 0.04 (cetaceans and manatees).
- Recovery Factor or Fr is set at 0.1 for endangered species and 0.5 when stocks are depleted, threatened, or of unknown status. When stocks are within OSP or are increasing and incidental mortality has not been increasing, other values may be used up to 1.

NMFS does not need to go further by stipulating specific recovery factors as there is ample guidance and the definition of bycatch limit, as we have stated in the proposed rule, notes a comparable equation for a bycatch limit is one that incorporates scientific uncertainty about the population estimate and trend and results in sustainable levels of incidental mortality and serious injury while still allowing the marine mammal stock to grow or recover.

Comment 33: One nation stated it is not clear how NMFS determines bycatch limits for incidental catches of marine mammals in individual fisheries given the fact that they have different stock development characteristics, feeding patterns, reproductive abilities, etc. The nation also asked from where the figure of 10 percent and below incidental catch level, as an objective, was taken.

Response: NMFS has conducted a series of workshops starting in 1994 to develop guidelines that may be consistently applied nationally to assess marine mammal stocks. These workshops resulted in Guidelines for Assessing Marine Mammal Stocks (GAMMS) and address the elements of PBR, abundance estimates, stock identification, etc. These guidelines and workshop reports can be found at *http://www.nmfs.noaa.gov/pr/sars/guidelines.htm.*

The MMPA includes a goal for U.S. domestic fisheries to reduce the mortality and serious injury levels incidental to commercial fishing to "insignificant levels approaching a zero mortality and serious injury rate." NMFS has defined this insignificant threshold as 10% of the PBR level for a given stock. Ten percent of PBR is a level of mortality and serious injury incidental to commercial fisheries that, by itself, would allow a population to equilibrate to a level within 90 percent of its carrying capacity and would be considered insignificant to the population.

Comment 34: One commenter was concerned that NMFS only requires export fisheries to reduce their mortality and serious injury below the bycatch limit, while allowing non-export fisheries causing bycatch of the same stock to exceed the bycatch limit. They recommended that NMFS require harvesting nations to demonstrate that, for any stock that interacts with an export fishery, all bycatch of that stock (both from export and non-export fisheries) is cumulatively below the bycatch limit.

Response: Section 101(a)(2) of the MMPA only provides the U.S. authority to require fish imported into the United States to meet U.S. standards; consequently NMFS has no authority to address non-export fisheries. Even so, NMFS will encourage harvesting nations to reduce cumulative bycatch by export, exempt, and non-export fisheries to levels below the bycatch limits for marine mammal stocks killed or seriously injured in such fisheries. We hope that through the development of effective bycatch mitigation measures and capacity building efforts, there will be the collateral benefit of bycatch reduction in non-export fisheries.

Comment 35: Several commenters opposed the "cumulative exceedance exemption" which allows a harvesting nation's export fisheries to export fish to the U.S. when the cumulative incidental mortality or serious injury of exporting fisheries exceeds the bycatch limit for a marine mammal stock or stocks provided the harvesting nation demonstrates that the portion of incidental marine mammal mortality or serious injury for which the exporting fishery is responsible is at a level that, if the other export fisheries of that nation interacting with the same marine mammal stock or stocks were at the same level, would not result in a cumulative mortality or serious injury in excess of the bycatch limit for that stock or stocks. Commenters in opposition noted this exception is not part of the U.S. regulatory program, does not ensure that a harvesting nation's mortality and serious injury level is below a marine mammal stock's bycatch limit or approaching ZMRG, and would not meet the goal of the MMPA to ensure that marine mammal stocks meet their optimum sustainable population. They further maintained that the exemption is complicated and will likely confuse nations trying to comply with this rule.

Response: NMFS disagrees. NMFS adopted this approach to encourage compliance with the rule and avoid impacting export fisheries with low bycatch, while allowing nations to focus resources on fisheries with the highest bycatch. This is similar to the U.S. marine mammal take reduction program that prioritizes increased regulation of fisheries with high bycatch rather than fisheries that contribute little to the cumulative estimated bycatch.

Comparable in Effectiveness

Comment 36: Nations, industry, and environmental NGOs suggested that NMFS must either define what will be deemed comparable to U.S. standards or provide more detail and specificity on the criteria that will be used to determine "comparable in effectiveness". Some commenters asserted that because "comparable in effectiveness" is vague, without establishing minimum standards that all nations must meet, it will be difficult for the agency to make consistent and objective comparability determinations. By adopting such a vague standard, the agency greatly reduces transparency and accountability to the public, making it difficult to ascertain how and why the agency made a particular comparability determination. Commenters urge NMFS to provide specific examples within the rule of alternative programs that it would find "comparable."

Response: In using the terms "comparable in effectiveness" NMFS means that the regulatory program effectively achieves comparable results to the U.S. regulatory program. This approach gives harvesting nations flexibility to implement the same type of regulatory program as the United States or a program that is completely different but achieves the same results. For example, if a particular fishery with high bycatch switches to non-entangling gear and can demonstrate that it has virtually eliminated its bycatch, those results can be considered comparable in effectiveness. Likewise, if a nation chooses to eliminate its bycatch by implementing time/area closures and can demonstrate the effectiveness of such closures, that regulatory program may be considered comparable in effectiveness. When making this determination, NMFS is evaluating, in lieu of implementing all conditions (*e.g.,* stock assessments and bycatch limits), a harvesting nation's implementation of bycatch mitigation measures that will result in clear and significant reductions.

Comment 37: One commenter stated that to properly ensure that a harvesting nation's regulatory scheme is comparable to the U.S. regulatory program, a comparability finding should include a review of all sources of human-caused mortality and serious injury under a harvesting nation's jurisdiction including all of its fisheries, not only those fisheries planning to export to the U.S.

Response: NMFS disagrees. Section 101 (a)(2) neither gives NMFS the legal authority to require nations to submit data on all human-caused mortality as a condition for a comparability finding nor does it authorize NMFS to regulate such mortality; see response to Comment 34.

Comment 38: One commenter supported the approach outlined in Alternative 3 of the Environmental Assessment requiring countries to implement specific regulatory measures required of U.S. commercial fishing operations as the result of a Take

Reduction Plan's implementing regulations, stating such an approach better meets the requirements of the MMPA.

Response: NMFS disagrees. Focusing only on those export fisheries for which NMFS has implemented specific regulatory requirements under a Take Reduction Plan would exclude many foreign fisheries from this regulation, permitting bycatch to continue, and providing no means to compel these fisheries to assess and reduce their bycatch.

Comment 39: The Marine Mammal Commission recommends that NMFS provide additional details on how it would make determinations as to whether U.S. and foreign fisheries are analogous, and that similarities in the taxa, behavior, and status of the marine mammals subject to taking be one of the considerations.

Response: Due to the highly variable nature of commercial fisheries and the marine mammals species with which they interact, NMFS cannot be rigid or overly prescriptive in its methodology for identifying analogous fisheries. To consider a fishery analogous, NMFS will use the best available information when considering the gear type, target species, and taxa of the marine mammal stocks incidentally killed and seriously injured.

High Seas Fisheries

Comment 40: For fisheries operating on the high seas, one of the conditions for a comparability finding is that a harvesting nation must demonstrate how its export fisheries implement both conservation and management and data requirements of any international agreement "to which the United States is a party." One commenter stated it is unclear why NMFS only requires compliance with agreements to which the United States is a party, as opposed to broadly requiring nations to comply with any international agreement that is applicable to that fishery.

Response: When fishing on the high seas, U.S. fishermen are required to comply with international measures to conserve and manage species of living marine resources recognized by the United States, pursuant to the High Seas Fishing Compliance Act (HSFCA) (16 U.S.C. 5505(1)). The United States participates in the negotiation and adoption of such measures. For export fisheries subject to measures adopted by RFMOs of which the United States is not a member, or under international agreements to which the United States is not a party, NMFS will still evaluate the harvesting nation's implementation of any conservation and management measures adopted under that intergovernmental agreement or by that RFMO as well as any other measures adopted by a harvesting nation that constitute its regulatory program governing its high seas export fisheries interacting with marine mammals. NMFS will then determine whether this regulatory program is comparable in effectiveness to the U.S. regulatory program for similar fisheries interacting with similar stocks.

Comment 41: Another commenter noted that the standards for transboundary and non-transboundary stocks appear to be identical, and thus without further detail, it is unclear to the reader why NMFS is separating them. A second condition that an export fishery operating on the high seas must meet is implementation in the export fishery of: (a) With respect to any transboundary stock interacting with the export fishery, any measures to reduce the incidental mortality and serious injury of that stock that the United States requires its domestic fisheries to take with respect to that transboundary stock; and (b) With respect to any other marine mammal stocks interacting with the export fishery while operating on the high seas, any measures to reduce incidental mortality and serious injury that the United States requires its domestic fisheries to take with respect to that marine mammal stock when they are operating on the high seas.

Response: These requirements target situations where the United States has adopted regulatory measures through a marine mammal take reduction plan governing U.S. vessels participating in high seas fisheries to reduce incidental mortality and serious injury of a transboundary stock. While the United States would generally attempt to advance such measures for adoption by the intergovernmental agreement or RFMO, there may be situations where the U.S. has implemented regulatory measures for transboundary stocks that are more restrictive than existing RFMO measures or where measures have not been adopted by the relevant international body or RFMO, for high seas fisheries that interact with transboundary stocks. A harvesting nation would be expected to implement a regulatory program for such stocks that is comparable in effectiveness to the U.S. regulatory program for its vessels operating on the high seas or the U.S. EEZ or territorial sea, including any relevant RFMO measures that the U.S. is applying to its fisheries. If the U.S. regulatory program includes measures prescribed for the high seas and the U.S. EEZ or territorial sea to reduce the incidental mortality or serious injury of transboundary stocks, and such stocks frequent both the high seas and the harvesting nation's EEZ or territorial sea, the harvesting nation must have a regulatory program applicable to both areas that is comparable in effectiveness to the U.S. regulatory program including any marine mammal take reduction plan measures.

Comment 42: A commenter noted the Western and Central Pacific Fisheries Commission, of which the United States is a member, has developed draft guidelines for the safe release of encircled animals in the purse seine fishery, and similar international guidelines are available for longline captured marine mammals. Given the role of the United States in developing and negotiating such arrangements, they recommended that the application of these guidelines should be considered sufficient under the proposed rule.

Response: NMFS acknowledges these guidelines but notes that RFMO conservation and management measures reflect multilateral agreements which may or may not meet U.S. standards for its domestic fisheries. The U.S. standard applicable to domestic fisheries under the MMPA prohibits the intentional encirclement of dolphins in the course of purse seine fishing; and there are additional regulatory requirements on longline fisheries to reduce the bycatch of false killer whales including longline gear requirements and longline prohibited areas (see *https://www.federalregister.gov/articles/2012/11/29/2012-28750/taking-of-marine-mammals-incidental-to-commercial-fishing-operations-false-killer-whale-take*).

Progress Reports

Comment 43: The majority of commenters supported the submission of a progress report. One commenter suggested that the progress reports should be made available to the public to aid outside groups in evaluating the veracity of the report and the extent of compliance with the MMPA rule. An industry organization supported the initial progress report but questioned the value of continued progress reports for harvesting nations that have been determined to have a comparable regulatory system, especially with the requirement to reapply and be reassessed every four years. The Marine Mammal Commission recommended progress reports be required for all fisheries to ensure that the conditions that led to a comparability finding being issued remain in place and that each fishery continues to be comparable to U.S. standards, particularly in cases where complete information was not provided by the harvesting nation. The Marine Mammal Commission further recommended that failure to meet research and monitoring standards by the time that the initial progress report is due should be a sufficient basis for implementing a trade ban immediately rather than allowing the full five-year exemption.

Response: NMFS maintains that progress reports provide the agency with an important means to track both the development and continued application of a regulatory program. While NMFS is not proposing to use the initial or subsequent progress report as the basis for imposing import restrictions, NMFS can use the information or lack thereof as grounds to initiate consultations to guide harvesting nations in the development of their regulatory program or urge improved compliance with the conditions of a comparability finding. For example, if NMFS provides a comparability finding to an export fishery that has just implemented or newly revised its regulations to meet reduce marine mammal incidental mortality or serious injury to levels below the bycatch limit, the progress report enables NMFS to track whether such regulations are meeting their target. This could prompt NMFS to work with nations to identify and correct problem to proactively avoid denying or revoking the comparability finding. Progress reports can also signal major shifts in the fishery which either reduce or increase incidental mortality or serious injury, enabling NMFS to work with the nations to make necessary adjustments. NMFS can also use the progress report as the basis to initiate reconsideration of a comparability finding.

Consultations

Comment 44: A commenter noted that information regarding regulatory requirements must be shared with nations, prior to the commencement of the five-year exemption period so every nation has equal opportunity to comply. Each nation needs an equal opportunity to share, discuss, and validate information.

Response: NMFS agrees and will continue to provide information on the rule to nations and use every avenue possible to consult with nations and provide information on an equal basis to facilitate compliance with this rule.

Additional Consideration/Flexibility

Comment 45: Several commenters noted that there can be multiple solutions to address a bycatch issue; therefore, harvesting nations should be afforded flexibility to set up regulatory programs to protect marine mammals and reduce bycatch. Different measures should not be discarded as long as they contribute to the required objective. Generally, programs that allow solutions to develop that meet the needs of the individual nation and communities have a higher likelihood of success than prescribing one standard approach.

Response: NMFS agrees. By taking into account different approaches in a harvesting nation's export fishery, including alternative measures that could bear on the feasibility and effectiveness of certain bycatch mitigation measures, NMFS considers alternative measures implemented by the nation that are as effective or more effective than those applicable in U.S. fisheries. It is the essence of "comparable in effectiveness."

Comment 46: A commenter was concerned that NMFS proposes to examine several "considerations" in determining whether a program is comparably effective, including "[w]hether the measures adopted by the harvesting nation . . . have reduced or will likely reduce" mortality and serious injury to below the bycatch limit; "the progress" of the foreign program in achieving its objectives; and "[t]he extent to which the harvesting nation has successfully implemented" bycatch measures. The commenter claims that this is contrary to "United States standards," which clearly require NMFS to only permit nations to import if they meet or go beyond the strict standards of section 101(a)(2).

Response: NMFS recognizes that there will be situations, similar to those encountered in our domestic fisheries, where comparability findings determinations will occur during a time when a harvesting nation may be implementing new regulations or revising existing regulations to meet the conditions of a comparability finding. NMFS believes that such actions should be encouraged rather than penalized. In those situations, NMFS must determine whether such regulations are likely to, or are making progress toward, reducing marine mammal bycatch. The Secretary must make that same determination when promulgating regulations to implement domestic take reduction measures, as the MMPA mandates that a "take reduction plan shall include measures the Secretary expects will reduce, within 6 months of the plan's implementation, such mortality and serious injury to a level below the potential biological removal level." 16 U.S.C. 1387(f)(5)(A).

Comment 47: The Marine Mammal Commission raised a similar concern to the one described in Comment 46, noting it would be unfortunate if comparability findings were granted to export fisheries at a time when U.S. fisheries' bycatch or marine mammal stock assessments are not meeting the performance standards but corrective actions are being implemented or developed. The Marine Mammal Commission recommends that NMFS base an export fishery's comparability finding on its comparability to the overall performance and effectiveness of the U.S. marine mammal science and regulatory framework over a longer time period.

Response: NMFS has included in the rule the consideration of "U.S. implementation of its regulatory program for similar marine mammal stocks and similar fisheries." NMFS will consider the implementation history of marine mammal take reduction measures and stock assessments.

Comparability Finding Requirements for New Entrants

Comment 48: The majority of commenters opposed granting a 1-year provisional comparability finding to a harvesting nation or fishery that has not previously exported to the U.S. With a provisional comparability finding, NMFS will allow imports from harvesting nations that have not submitted "reasonable proof" that the new foreign commercial fishing operation is meeting U.S. standards for marine mammal bycatch. Commenters urged NMFS, once the proposed regulations come into force, to only allow imports from new foreign commercial fishing operations after they have received a comparability finding supported by reasonable proof. One industry commenter recommended new entrants be afforded the same five-year exemption period proposed for nations and fisheries currently exporting fish or fish products to the United States, and noted that there is no justification for two different approaches.

Response: NMFS retains the provisional comparability finding in the rule. While a new entrant may or may not be a new fishery or merely an existing fishery that is a new exporter, is inconsequential. All nations will receive an initial five-year exemption period and will be familiar with the requirements of this rule. NMFS does not want to incentivize non-compliance by providing each new entrant with another five-year exemption period. The shorter timetable for new entrants provides both NMFS and harvesting nations with the minimum amount of time to gather information to classify the fishery, apply for, and make a comparability finding determination.

Intermediary Nations

Comment 49: Several commenters associated with the Maine lobster industry and the Maine Department of Marine Resources expressed concern with the intermediary nations provisions. A significant portion of Maine's lobster is sent to Canada for processing and comes back to the United States as a product of Canada. Commenters claim that seafood traceability is inadequate and existing traceability technologies are not operationally feasible for many fish product supply chains, including live lobster, to address any trade restrictions imposed by the proposed rule due to comingling of product and scale of operations. Application of an import prohibition on Canadian lobster could prevent millions of pounds of Maine-caught lobster from being sold in the U.S.

Response: There is no basis now to speculate that any import prohibition would ensue on Canadian lobster. Also in terms of re-imports to the U.S. of U.S. lobster, processed in Canada, the commenter has wrongly characterized Canada as an intermediary nation. For the Canadian caught lobster, Canada is the harvesting nation, and for the U.S. caught lobster Canada doesn't meet the definition of an intermediary nation because the U.S. lobster fishery is not on the List of Foreign Fisheries. If the Canadian lobster fishery fails to receive a comparability finding, the fish and fish products harvested in the Canadian lobster fishery would be subject to an import prohibition and NMFS may require a certificate of admissibility accompany processed lobster from Canada that is not harvested in the Canadian lobster fishery. According to Maine Department of Marine Resources (DMR), in 2014, Maine imported $238 million of seafood from Canada. However, DMR did not stipulate what percentage of these imports are Maine-caught lobsters being re-imported to the U.S. Two actions appear to mitigate any potential impact from requiring a certificate of admissibility under this rule. First, Maine is increasing its lobster meat processing capabilities. In 2010, there were five companies processing lobster, in 2013 that number increased to 15 firms processing approximately 20 million pounds of meat. As Maine continues to increase its processing capacity, any potential economic impact from requiring a certificate of admissibility would be lessened.

Second, Canada is implementing traceability measures, not in response to this rule, but to global forces demanding seafood traceability throughout supply chains. In 2011 the Canadian Council of Fisheries and Aquaculture Ministers undertook the "Lobster Traceability Pilot Project" the objective of which was to "test the implementation of a seafood traceability system with practical experience, with real-life situations and challenges, and with a small number of participants at each step of the lobster value chain (a small number of fishermen, a few processors, one or two distributors, etc.)." The report of the pilot project lays out traceability requirements and models based on existing government regulations and existing traceability programs that Canada should use as it moves forward with its traceability program. The pilot project identified that the primary requirement of any traceability program must be that it can fully trace lobster, at any point in the supply chain, back to the source within 24 hours. Globally recognized basic models for traceability, and one implemented in the U.S. Bioterrorism Act, include a "one up, one down" approach. This mandates that each organization in the supply chain must be able to identify from whom, where, and when the product was received and to whom, where, and when the product was sent. Since this pilot project report several harvesters and processors have adopted traceability programs including the lobster fishery on the Gaspe Peninsula in Quebec and the Fisheries, Science Stewardship and Sustainability Board implemented a Newfoundland, Labrador lobster traceability program. As Canadian importers and processors continue to develop and roll-out additional tracking, verification, and traceability procedures that will allow for the differentiation of U.S.-harvested product from Canadian product, Canada should be able to meet any certification of admissibility requirements the AA may impose on processed lobster from Canada.

Comment 50: The proposed regulations call for any nation that NMFS identifies as a possible intermediary nation to either prohibit the importation of fish or fish products from fisheries subject to import prohibitions under this rule or to have procedures to reliably certify that exports of fish and fish products exported to the United States do not contain fish or fish products caught or harvested in a fishery subject to an import restriction. Several commenters expressed concern that this approach introduces additional challenges to traceability and allows for the mixing of legally and illegally sourced fish; subsequently allowing illegally sourced fish to enter international trade as a "legal" product of the exporting nation. Another commenter stated that the rule lacks any real details as to what constitutes a reliable certification and does not specify what type of port state measures will be expected to monitor transshipments, loading, unloading, segregation of catch, processing of raw product from mixed sources; what type of effective monitoring, control and surveillance systems NMFS will require to be in place, or what type of legislative and administrative measures will be required to support a reliable catch documentation system.

Response: NMFS is neither prescribing the details for traceability or segregation of fish and fish products caught or harvested in a fishery subject to an import restriction nor defining what constitutes a reliable certification. The burden to develop these certification procedures rest on the possible intermediary nation, and NMFS wants to provide such nations with the flexibility to determine how best to comply with the intermediary nation requirements. If the nation's procedures can reliably certify that exports of fish and fish products from the nation to the United States do not contain fish or fish products caught or harvested in a fishery subject to an import prohibition, NMFS will continue to allow trade in those fish and fish products from that nation.

Certificate of Admissibility

Comment 51: Several commenters including the Marine Mammal Commission were extremely concerned that the rule would allow a harvesting nation denied a comparability finding for one fishery to export that same seafood product from another fishery in another region or using a different gear type, which presents considerable risk that the trade ban could be bypassed. One commenter believes the possibility of fraud or even accidental mislabeling is too great, and the documentation required from the exporting nation is too complex to expect compliance or detection of violations by the United States. Therefore, the Marine Mammal Commission recommended that, if a harvesting nation fails to receive a comparability finding for a certain seafood product produced by a given fishery, then all exports of that seafood product from all fisheries should be prohibited until the harvesting nation is able to meet U.S. standards, unless the harvesting nation and intermediary nation or the United States are able to design and implement a tracking program that provides reasonable assurance that no prohibited fish or fish products are being exported to the United States.

Response: NMFS disagrees and believes the rule addresses the concern through provisions providing for the Assistant Administrator to require a Certification of Admissibility on the same or similar fish and fish products caught or harvested in another fishery of the harvesting nation and not subject to the prohibition. Requiring a Certification of Admissibility properly places the burden on the harvesting nation to substantiate the attestation on the Certification of Admissibility form that the fish or fish products are not caught or harvested from the fishery subject to an import prohibition. The Certification of Admissibility avoids penalizing export fisheries that receive a comparability finding by allowing the same or similar fish and fish products from those fisheries to enter the United States.

Comment 52: A nation asked what constitutes other readily available sources and how NMFS will determine the veracity of that information. Another commenter expressed concern that NMFS could potentially rely on information provided by nongovernmental organizations and the public and asked how NMFS would ensure that information provided by nongovernment organizations and public sources is substantiated and credible if utilized in comparability finding determinations.

Response: NMFS will analyze and assess readily available information from a variety of sources, including scientific literature and reports from RFMOs and intergovernmental organizations. NMFS will evaluate which information and evidence is most appropriate for use in classifying fisheries and making comparability findings. This information could include data actively gathered by the U.S. Government as well as data offered by other nations, or international organizations (such as RFMOs), institutions, or arrangements that provides a reasonable basis to evaluate comparability findings or classify fisheries. NMFS decisions under this rule must comply with the Administrative Procedure Act, which prohibits arbitrary and capricious decision making.

Burden of Proof and Non-Comparability Findings

Comment 53: Several commenters note that the proposed rule rightly places the burden of proof on the harvesting nation to provide the information necessary to show that fish and fish products exported to the United States were not caught in ways that exceed U.S. marine mammal protection standards. Unless sufficient evidence is presented by the exporting nation, imports of such fish and fish products are to be banned. Additionally, several commenters recommended that NMFS reject the options of issuing non-comparability findings or issuing comparability findings unless it was determined that such a finding was unwarranted. Other commenters noted that neither of these are viable options, as neither allows a process for the U.S. to ensure compliance with the MMPA before allowing access to the U.S. market, and both would place the burden of proof on NMFS. The MMPA requires the harvesting nation to provide evidence of compliance to maintain or gain access to the U.S. market; this process provides greater incentive for compliance and also allows for bilateral dialogue and U.S. technical and funding support to support compliance. The regulations, as proposed, will go much further in ensuring the goal of marine mammal protection across the globe. Likewise, the Marine Mammal Commission recommended that NMFS either issue or deny a comparability finding, rather than issuing a "Finding of Non-Comparability for nations that do not meet comparability finding requirements" as it would violate the MMPA by switching the burden of proof onto the U.S. government by allowing imports to continue until NMFS has collected sufficient information to show that the measures in place for a given fishery are not comparable. The Marine Mammal Commission further recommended that the final rule clearly specify that harvesting nations be issued a comparability finding only if they meet the U.S. standards, rather than be issued a comparability finding unless it is shown that they do not meet the applicable requirements.

Response: The MMPA bans imports of fish and fish products that result in the incidental morality or serious injury of marine mammals in excess of U.S. standards for administering the ban to "insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effect on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States." 16 U.S.C. 1371(a)(2)(A). Thus, this rule requires any harvesting nation submitting an application for a comparability finding for a fishery to provide documentary evidence demonstrating that it has met the applicable conditions for a comparability finding for that fishery, including reasonable proof as to the effects on marine mammals of commercial fishing technology in use in the fishery for fish or fish products exported from such nation to the United States.

Comment 54: One commenter suggested that NMFS could presume that a harvesting nation's standards are comparable in effectiveness to those of the United States upon presentation of reasonable proof of a valid marine mammal protection program. Such a country could export fish to the United States unless NMFS issued a non-comparability finding upon closer examination of the nation's application, or a comparability finding would automatically issue if NMFS did not act on the application within a specified time period, perhaps six months, subject to a later determination of non-comparability. The commenter also suggested that NMFS consider third party certifications of foreign fisheries, as sufficient to establish comparability findings and certifications of admissibility in order to reduce redundant efforts. Likewise one nation recommended NMFS consider Marine Stewardship Council (MSC) certifications in support of program efficiencies, towards establishing exempt fisheries classifications under the proposed rule, since amongst other criteria, the MSC certification considers marine mammal bycatch.

Response: NMFS disagrees, see response to *Comment 53.* Nothing in the MMPA authorizes NMFS to abrogate its responsibility to determine whether a fishery has bycatch in excess of U.S. standards to a third-party issuing certifications for other market or ecological purposes. NMFS cannot outright use third-party certifications as a proxy that an export fishery is meeting the conditions of a comparability finding. NMFS can consider such information as part of the documentary evidence that a harvesting nation submits to receive a comparability finding. Currently, NMFS does not recognize MSC certification in its management of protected species because the criteria for obtaining MSC certification do not comport with all the specific requirements of the MMPA or the ESA. Therefore, NMFS cannot base determinations to issue comparability findings solely on MSC certification.

Comment 55: Several nations asserted that NMFS should issue a comparability finding in situations where the agency cannot evaluate an application within the stipulated timeframe or cannot judge whether the harvesting nation's regulatory program is comparable in effectiveness, due to scientific uncertainty, the lack of data, absence of consensus among scientists, or technical reasons such as there is no similar fishery. While other commenters stressed that, in the absence of reasonable, direct proof from a harvesting nation, NMFS should not render a comparability finding.

Response: NMFS will only make its comparability finding determinations based on the information provided by the nation, and any other readily available information, taking into consideration scientific uncertainty.

Reasonable Proof

Comment 56: Several commenters recommended that NMFS define "reasonable proof." Some commenters stated that requiring harvesting nations to provide documentary evidence of sufficient detail and an attestation that the evidence is accurate does not define the specific requirements which represent "reasonable proof." Other commenters stated, given the MMPA's reliance on the best available scientific information, NMFS should incorporate this standard into the meaning of "reasonable proof" for the submission of scientific information and should make determinations on Lists of Foreign Fisheries and comparability using the best scientific information available for science-based factors. The Marine Mammal Commission interprets the "reasonable proof" requirement of section 101(a)(2)(A) as placing the onus on the exporting country to provide information of sufficient quality and reliability to make the required showings. The Marine Mammal Commission asserts that the proposed rule does not include clear mechanisms for NMFS to ensure the reliability of the information that is submitted and recommended that NMFS require the harvesting nation to provide information in sufficient detail to demonstrate its reliability.

Response: NMFS will, as a matter of practice, use the best scientific information available. This rule does not define "reasonable proof"; but, in our guidance to harvesting nations, NMFS will make clear that the information provided by a harvesting nation in its application for a comparability finding must include documentary evidence of sufficient detail, quality, and reliability for NMFS to fully evaluate the regulatory program for a given export fishery.

Capacity Building

Comment 57: The Marine Mammal Commission urges NMFS to pursue one-on-one consultations, as well as capacity building, whenever possible. The Marine Mammal Commission and other commenters stated it would be important for NMFS to have sufficient funding in order to provide "carrots" and not just "sticks" to build capacity and encourage compliance. One commenter recommended that NMFS, in conjunction with cooperating nations, establish a permanent fund for research and implementation, and work in conjunction with foreign nations to make new bycatch reduction technologies available to all. Other commenters submitted that budgetary constraints and realities make direct capacity building assistance to other nations for MMPA implementation unlikely, especially given the number of competing priorities.

Response: NMFS, compliant with requirements regarding Congressionally-appropriated funding, will work cooperatively with harvesting nations to assist those nations in reducing their marine mammal bycatch and provide appropriate assistance to help such nations obtain a comparability finding. While NMFS cannot commit to establishing a fund (given this would require Congressional appropriations), we note that capacity building can take many forms, including technical collaboration between staff at NMFS and harvesting nations.

Comment 58: The Marine Mammal Commission recommended that any harvesting nation seeking a comparability finding should be subject to a shorter exemption period if the harvesting nation has benefited from capacity building from the United States in designing the bycatch reduction program.

Response: NMFS disagrees; the capacity building program is designed to help those nations, species, and fisheries most in need to comply with the comparability finding requirements. The Marine Mammal Commission recommendation would be a disincentive for nations to seek and participate in capacity building efforts.

Comment 59: Numerous commenters expressed concern that this rule would create a complex and cumbersome regulatory program for NMFS to administer and the process of evaluating comparability finding applications will be very time and resource consuming given the number of harvesting nations, especially with the added layer of complexity of having to potentially translate existing rules and applications into English. Commenters were troubled that implementation of this rule, including its capacity building, has the potential to divert already limited resources necessary to implement MMPA provisions for domestic fisheries and result in other unintended consequences to U.S. fisheries. Still others were concerned that the proposed regulations put a sizable administrative burden on an agency that is resource-constrained and, without additional resources, these tasks may not be accomplished within the prescribed timeframes. A commenter recommended that NMFS request and ensure that the agency has the appropriate budget to fully implement the final regulatory regime. The Marine Mammal Commission recommended that the preamble to the final rule estimate the resource requirements (staff, funding) needed to implement the rule and identify the steps that will be taken to secure those resources (*e.g.*, new budget initiatives, reallocation).

Response: NMFS acknowledges these concerns and will work, within its appropriated budget, to allocate sufficient resources toward the implementation of this program while continuing to meet its domestic conservation, science, and management obligations. The tasks and the actions to administer the rule are set out in Table 17 of the RIR. NMFS estimates that implementation of this rule will cost approximately $0.9 million per year, which is based on the cost of NMFS and contract staff to carry out these activities. NMFS estimates that a total of 3.5 full time employees (FTEs) and two contract employees with subject matter expertise will be required. The 3.5 FTEs are already part of the plan for hiring for the Office of International Affairs and Seafood Inspection (3 FTEs) and the Office of Sustainable Fisheries (0.5 FTEs) and therefore this activity will not require additional personnel or funds. NMFS has provided an estimate in the Final Regulatory Impact Review of the cost for NMFS to administer the rule and the task associated with the rule.

Comment 60: The Marine Mammal Commission recommended that NMFS explore some form of cost recovery to supplement funding needed to implement the import provisions of the MMPA. A commenter specifically suggested a "sustainability fee" levied on foreign fisheries commensurate with their level of bycatch. Recognizing the multi-billion dollar value of seafood products imported annually into the United States, shifting the burden of funding research and information collection onto those nations that benefit from selling fish and fish products to the U.S. market is a way to reduce the costs to NMFS.

Response: The MMPA does not authorize NMFS to collect such fees, making implementation of a cost recovery system impossible.

Monitoring, Verification, and Enforcement

Comment 61: A commenter noted that given the sources of imported seafood subject to the MMPA import rule are nations that likely lack the capacity and perhaps the will to effectively monitor and control both their fishing activities and their seafood supply chain, there is substantial opportunity for fraudulent declarations intended to circumvent the intent of this rule and any sanctions imposed pursuant to that authority. The commenter recommended that NMFS make extra efforts to ensure the veracity of declarations and take swift action to prohibit imports if verification is not clearly documented or observed. Several other commenters noted that NMFS should consider the link between illegal, unregulated and unreported (IUU) fishing rates and incidental bycatch and should modify the proposed rule to require examination of IUU data when making a comparability finding.

Response: NMFS acknowledges that the Presidential Task Force on Combating Illegal, Unregulated, and Unreported (IUU) Fishing and Seafood Fraud will provide a helpful tool for use in assessing comparability. The proposed regulations will establish traceability for some marine species from the point of catch or the location of the aquaculture facility to the first point of sale in the United States. This documentation requirement will aid NMFS in determining whether seafood came from a legal fishery, add more transparency to the supply chain to address IUU fishing and seafood fraud, and help enforce compliance with this final rule.

Comment 62: Several commenters criticized NMFS for failing to provide details as to how it intends to prevent fraud and to ensure the authenticity and accuracy of information submitted for comparability findings and certifications of admissibility. They questioned how NMFS would ensure that comparability findings are based on a truly effective program rather than one that only looks good on paper. Similarly, the Marine Mammal Commission recommended that NMFS require exporting countries to submit more than just a basic written description of its incidental take program to obtain a comparability finding. The Marine Mammal Commission noted that NMFS must take into account not only the statutory or regulatory requirements imposed on foreign fishermen but also the corresponding level of compliance. Therefore, the Marine Mammal Commission recommended that NMFS require nations to provide information on the methods and effectiveness of fishery monitoring and enforcement activities in addition to the overall marine mammal bycatch reduction program.

Response: NMFS agrees that implementation and enforcement of a regulatory program is critical to its effectiveness and will take these factors into account in making comparability determinations. NMFS believes that it has included data and information verification safeguards through the rule's provisions including allowing other entities to challenge a comparability finding through the submission of information demonstrating that the conditions for a finding are not being met.

International Agreements

Comment 63: The Marine Mammal Commission suggested that, in addition to working bilaterally on capacity building, NMFS should continue a multilateral effort to develop guidelines for reducing marine mammal bycatch through the United Nations Food and Agriculture Organization, much as was done for sea turtles. In addition to providing marine mammal bycatch guidance for nations to apply in their small-scale domestic fisheries, these guidelines could be a powerful tool in multilateral negotiations within RFMOs on measures to address marine mammal bycatch. One nation recommended that the appropriate approach should be international action rather than unilateral measures; and strongly urged the U.S. to seek an international agreement on a common standard for by-catches of marine mammals that are in conformity with international trade law.

Response: NMFS agrees and will continue its multilateral efforts to develop guidelines for reducing marine mammal bycatch under the United Nations Food and Agriculture Organization. Consistent with the legislative intent of the MMPA, NMFS will work with the U.S. Department of State to protect marine mammals through the adoption of measures in relevant international fora that require reporting of bycatch data and use of bycatch mitigation gear. NMFS will also continue its efforts to work cooperatively with nations that lack sufficient capacity for fisheries monitoring, control, surveillance, and bycatch mitigation and assist these nations to achieve sustainable fisheries.

Economic Burden

Comment 64: One commenter stated that most foreign nations exporting fish and fish products to the U.S. are unlikely to have comparable marine mammal protection legislation in place and thus unlikely to have information needed to meet the comparability finding requirements. As a result, countries that export a small number of products may choose to stop exporting to the U.S. if the costs associated with meeting the MMPA import provision requirements outweigh the benefits, and those that wish to obtain comparability findings could require compliance with marine mammal measures only for sectors that export fish to the U.S., which may represent a small portion of their fisheries.

Response: NMFS cannot control which export fisheries will seek comparability findings and choose to continue to export to the U.S. market. NMFS has crafted a rule that implements the relevant provisions of the MMPA, establishes clear standards, allows flexibility to comply with those standards and, when possible, offers assistance to achieve those standards.

Comment 65: A commenter questioned NMFS' statement that "[n]o U.S. industrial sector is likely to be directly affected by [this] rulemaking." While it is true that the burden of complying with the proposed regulation will be borne by NMFS and the foreign harvesting nations, the U.S. seafood supply chain relies heavily on having access to imported seafood. Any uncertainties to the availability of supply will impact pricing and could jeopardize jobs. The burden to the U.S. industry is difficult to estimate without having a sense of which, if any, of the over 120 nations would be successful in achieving a comparability finding and thus be allowed to continue to export fish and fish products to the U.S. Another commenter objected to the lack of economic impact analysis included in the Environmental Assessment for the proposed rule, especially for the U.S. lobster industry, claiming NMFS' inability to identify with certainty the nations that will fail to obtain a comparability finding should not absolve the agency of its obligation to make a good faith attempt to identify and analyze the significant adverse impacts to state and local economies that may result from trade restrictions imposed by the proposed rule. Another commenter challenged NMFS' assertion that one country's seafood can easily be substituted for another's. As stated, ''it is possible that a substitute product will be more expensive or otherwise less preferable to a prohibited foreign fish or fish product.'' If the substitute is more expensive, consumers will not buy it. To the extent that they purchase another seafood product, the impact generally may be lessened, albeit not to the importer who suddenly finds himself with no products and no customers. In that situation import prohibitions will be devastating to those U.S. businesses built around that particular supply.

Response: There are several factors that would have to occur for the regulations to directly increase costs to U.S. suppliers. The fishery subject to a ban would need to provide a significant proportion of the product to the U.S. Among the most heavily imported seafood products into the U.S., there are relatively few countries that presently provide a disproportionately large amount. The RIR provides data on the top exporting nations for the most widely imported categories of seafood. For example, Thailand is a major supplier of shrimp and tuna; however, for much of that product they are the processing (intermediary) nation and not the harvesting nation. Chile and Canada are major suppliers of salmon. Most fisheries supply a relatively small amount of product such that importers should be able to source an equivalent amount of product from another fishery. NOAA recognizes that substitute product may be less desirable and/or more expensive, but it would be speculative to quantify these costs. Additionally, there are important intermediary nations in the processing of certain fish and fish products and the cost of a trade prohibition to the U.S. suppliers and consumers would be contingent upon the role and behavior of intermediary nations.

If a foreign nation's ability to import certain fish or fish products into the United States is limited upon the failure of a particular export fishery to receive a comparability finding and the subsequent application of import prohibitions, this may impact the ability of U.S. suppliers to access fish or fish products from that nation. NMFS assumes that for the majority of the fish and fish products imported and consumed alternative sources of fish and fish products could mitigate the impacts of restrictions on U.S. suppliers' access to fish and fish products. NMFS will continue to work with partner resource agencies in the Federal and state governments to obtain the data necessary to fully understand and analyze potential trade implications of any import prohibition.

Level Playing Field

Comment 66: Numerous commenters supported efforts to level the playing field for U.S. fisheries, noting that American fishermen comply with the requirements of the MMPA in conducting their fishing activities, and those efforts come at an increased cost, so it is only fair to U.S. fisheries that a level playing field exists such that importing fisheries abide by similar standards when introducing fish into the U.S. market.

Response: NMFS agrees that the intent of sections 101(a)(2) and 102(c)(3) of the MMPA is to ensure that all fish and fish products entering the U.S. market was caught or harvested in fisheries meeting the U.S. standards for marine mammal bycatch.

Trade Considerations

Comment 67: One nation contended that not all marine mammals, including dolphins and whales, are threatened to extinction; therefore, it is not acceptable for an importing country to unilaterally impose trade restriction on exporting countries based solely on its unilateral sense of value. Another nation noted that the rule may create unnecessary obstacles to trade, because it requires considerable and unknown use of administrative and human resources relating to biological research, record keeping and statistics for the exporting countries, in particular developing countries, and seeks to influence the specific policy decisions of trading partners. Several questioned whether the rule is consistent with the WTO obligations of the U.S.

Response: NMFS is mindful of U.S. obligations under the WTO Agreement when implementing the provisions of the MMPA and works with the Office of the U.S. Trade Representative to ensure that any actions taken under the MMPA are consistent with these obligations. Agency actions and recommendations under this final rule will be in accordance with U.S. obligations under applicable international law, including the WTO Agreement. Consistent with the WTO Agreement and U.S. obligations under other free trade agreements, NMFS will consider a harvesting nation's existing mechanisms, where they provide for comparable protection of marine mammal species and are appropriate to the conditions in the harvesting nation. By taking into account different conditions in a nation's fishery, including conditions that could bear on the feasibility and effectiveness of certain bycatch mitigation measures, NMFS considers alternative measures implemented by the nation that are as effective or more effective than those applicable in U.S. fisheries.

Comment 68: One commenter suggested that NMFS did not consider potential retaliatory responses of foreign markets on exports from the United States and the impact of such retaliation on U.S. exports. If the U.S. violates WTO standards by insisting that a sovereign nation with different laws and social mores comply with a complex marine mammal regulatory scheme such as is in place for U.S. fisheries, what makes NMFS think that said sovereign nation will not exercise its rights under the WTO to retaliate against U.S. exports?

Response: As noted in the response to *Comment 67,* the rule is designed to enable NMFS to apply this entire regulation, including any import prohibitions on certain fish or fish products, consistent with U.S. international obligations, including the WTO Agreement. Included in NMFS' approach is its intention to regulate in a fair, transparent, and non-discriminatory manner and to make determinations based on the best available science.

Comment 69: A commenter noted that the public will be challenged in assisting NMFS with comparability findings as it will not be informed about what information a nation has submitted and what information the agency already has and what it needs. They recommended NMFS review the proposed compliance process and identify additional opportunities for public notice and comment; and urged NMFS to provide for notice and comment on its proposed comparability findings.

Response: NMFS believes that the rule contains ample opportunity for input from the public, including at the point of publishing the List of Foreign Fisheries, the call for information on bycatch under the Moratorium Protection Act that NMFS intends to use to gather additional information on marine mammal bycatch, and the ability to challenge comparability finding determinations published in the **Federal Register**.

Changes From Proposed Action

In addition to streamlining the final rule to reduce duplication and improve readability, NMFS has made several changes in the final rule to respond to public comments, and provide clarification. The key changes are outlined below.

1. Changes to the Definition of Fish and Fish Products

In the proposed rule, "fish and fish products" was defined as any marine finfish, mollusk, crustacean, or other form of marine life other than marine mammals, reptiles, and birds, whether fresh, frozen, canned, pouched, or otherwise prepared in a manner that allows species identification, but did not include fish oil, slurry, sauces, sticks, balls, cakes, pudding and other similar highly processed fish products. Commenters strongly opposed this exemption arguing it would exclude from the regulatory requirements a significant proportion of fish and fish product imports so this definition has been revised in response to public comments. NMFS is removing from the definition of fish and fish products the exemption pertaining to fish oil, slurry, sauces, sticks, balls, cakes, pudding and other similar highly processed fish products. NMFS had originally excluded these products because due to the high degree of comingling or processing through the supply chain that may be associated with these products and the potential difficulty identifying the source of fish contained in such products.

NMFS recognizes the List of Foreign Fisheries is linked to fish that are caught or harvested in a specific fishery, not the level of processing that occurs downstream of the harvest event. As suggested in public comment, NMFS considers the product form to be less determinative of an importer's ability to trace back to the source fishery than is the specificity and number of fishery or fisheries which generated the raw material for that product. For example, NOAA considers it no less feasible to identify surimi or fish sticks as a product originating from the pollock fishery as it would be for pollock fillets. That said, NMFS did not anticipate that a fishery would appear on the List of Foreign Fisheries, and therefore need to apply for a comparability finding, solely because of its exports of highly processed products to the United States. However, as that is a possibility and because it will not increase the burden on harvesting nations whose fisheries are already on the List of Foreign Fisheries for fish and fish products other than highly processed products, NMFS considers it appropriate to revise the definition of fish and fish products as described.

NMFS does not consider the level of processing to be applicable to the definition of fish and fish products; rather the level of processing is applicable to the implementation of import prohibitions for fish and fish products from a specific fishery denied a comparability finding. If a fishery of a harvesting nation fails to receive a comparability finding, fish and fish products caught or harvested in that fishery will be subject to an import prohibition. When import prohibitions are put into place for such a fishery, NMFS will designate HTS codes of species and product originating from that fishery that will be prohibited from importation. NMFS ability to determine product type and origin for all species is limited. In designating those HTS codes NMFS acknowledges that, depending on data reporting requirements associated with that product and the traceability of product, NMFS may not in all cases include highly processed fish products (fish oil, slurry, sauces, sticks, balls, cakes, puddings, and other similar highly processed fish products) for which the species of fish comprising the product or the harvesting event(s) or aquaculture operation(s) of the shipment of the product cannot be feasibly identified, either through inspection or documentation back to the fishery subject to the import prohibition. Also, for the same or similar fish or fish products caught or harvested in another fishery of the harvesting nation, NMFS is clarifying in the final rule that no certification of admissibility shall apply with respect to fish or fish products for which it is infeasible to substantiate the attestation contained in the certification of admissibility that the fish or fish products do not contain fish caught or harvested in a fishery subject to an import prohibition. NMFS will determine whether to apply a certification of admissibility to any fish or fish product on a case by case basis.

2. Clarification of Conditions for a Comparability Requirement

NMFS further clarified that a condition for a comparability finding, applicable to all export fisheries regardless of where they operate, that must be included in a regulatory program is the condition that the regulatory program must provide for or effectively achieves comparable results to measures that reduce the incidental mortality and serious injury of a marine mammal stock that the United States requires its domestic fisheries to take with respect to a transboundary or marine mammal stock.

3. Clarification of Use of Alternative Documentation to the Certification of Admissibility

In the preamble to the proposed rule, NMFS discussed its intent that when the Automatic Commercial Environment/International Trade Data System (ACE/ITDS) rulemaking and subsequent rulemakings to implement the recommendations of the Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud (Task Force) (*see* 79 FR 75536; December 18, 2014) are issued, NMFS may be able to identify fish prohibited from entry under MMPA authority based on the documentation specifying fishery of capture/harvest to be submitted by the importer to ACE/ITDS as part of the seafood traceability program. To eliminate duplicative requirements for MMPA import restrictions, NMFS will utilize import documentation procedures that have been developed as part of the ACE/ITDS and Task Force rulemakings so long as the information is sufficient to identify the fish or fish product was not caught or harvested in a fishery subject to an import prohibition under the MMPA. NMFS has added language in the regulations for the Certification of Admissibility to allow alternative data collection systems that require the same information found on the Certification of Admissibility.

Classification

This rule is published under the authority of the Marine Mammal Protection Act, 16 U.S.C. 1371, 16 U.S.C. 1372, and 16 U.S.C. 1382.

Under NOAA Administrative Order (NAO 216–6), the promulgation of regulations that are procedural and administrative in nature are categorically excluded from the requirement to prepare an EA. Nevertheless, NMFS prepared an EA for this action to facilitate public involvement in the development of the national standard and procedures and to evaluate the impacts on the environment. This EA describes the impacts on marine mammals associated with fishing, the methods the United States has used to reduce those impacts, and a comparison of how approaches under the MMPA and the High Seas Driftnet Fishing Moratorium Protection Act provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 would affect harvesting nations.

The alternatives described in section 2.1 of the EA (see NEPA) provide five alternatives for defining "U.S. standards" that would reduce mortality and serious injury of marine mammals in fishing operations (Sections 2.1.1 through 2.1.5). In addition to defining standards, the alternatives identify implementation and compliance steps as part of an overall regulatory program for harvesting nations wishing to export fish and fish products into the United States.

The alternatives to implement the import provisions of the MMPA are as follows: Under Alternative 1 (Quantitative Standard), NMFS would require harvesting nations wishing to export fish and fish products to the United States to, as required by NMFS for U.S. domestic fisheries, reduce incidental mortality and serious injury of marine mammals to levels below PBR and subsequently to the same "insignificant" threshold, or 10 percent of potential biological removal, to export fish and fish products to the United States.

Alternative 2 (Preferred Alternative) would require harvesting nations wishing to export fish and fish products to the United States to demonstrate comparability with U.S. standards as set out for domestic fisheries under sections 117 and 118 of the MMPA. Comparability is defined as "comparable in effectiveness to that of the United States [regulatory program]," not necessarily identical or as detailed. A finding of comparability would be made based on the documentary evidence provided by the harvesting nation to allow the Assistant Administrator to determine whether the harvesting nation has developed and implemented a regulatory program comparable in effectiveness to the U.S. program prescribed for U.S. commercial fisheries in sections 117 and 118 of the MMPA. Like the prior alternative, the preferred alternative also requires calculation of PBR or a bycatch limit and reducing incidental mortality and serious injury of marine mammals to levels below the bycatch limit.

Alternative 3 would define U.S. standards as those specific regulatory measures required of U.S. commercial fishing operations as the result of a take reduction plan's implementing regulations. Such regulatory measures could be applied to fisheries conducted on the high seas where a take reduction plan is in place (and thus the requirements would already apply to vessels under the jurisdiction of the United States), and to foreign fisheries, regardless of their area of operation, that are comparable to U.S. fisheries.

Alternative 4 uses a procedure of identification, documentation and certification devised under the HSDFMPA and promulgated as a final rule in January 2011 (76 FR 2011, January 12, 2011).

Alternative 5, the no action alternative, proposes an approach for taking no action to implement section 101(a)(2) of the MMPA.

Overall, the preferred alternative in the EA sets the U.S. import standards for harvesting nations as the same standard used for U.S. commercial fishing operations to reduce incidental mortality and serious injury of marine mammals with flexibility for comparability in effectiveness. It takes an approach that evaluates whether fish and fish products exported to the United States are subject to a regulatory program of the harvesting nation that is comparable in effectiveness to the U.S. regulatory program in terms of reducing incidental mortality and serious injury and considers fish and fish products not subject to such a regulatory program as caught with technology that results in marine mammal incidental mortality and serious injury in excess of U.S. standards. This approach provides harvesting nations with flexibility to implement the same measures as under the U.S. program or other measures that achieve comparable results.

This rulemaking has been determined to be significant for the purposes of Executive Order (E.O.) 12866 because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to E.O. 12866, NMFS conducted a Regulatory Impact Review (RIR). When conducting the RIR and the EA's socioeconomic analysis of the preferred alternative, NMFS considered the number of harvesting nations and the types of fish products exported to the United States. In 2012, 122 nations exported fish and fish products into the United States (see EA Section 3.4.3 Table 3). Fifty-five percent (66 nations) of those nations export five or fewer fish products, and 74% of the nations export 10 or fewer fish products. Only nine economies export 25 or more fish products; they are: Canada, Chile, China, Japan, Mexico, Taiwan, Thailand, South Korea, and Vietnam. With the exception of Japan, all of these economies are included within the U.S. list of top ten seafood trading partners by volume and weight (see EA Section 3.4.3 Table 4).

The United States imports more than 67 marine species, with tuna, shrimp, salmon (both farmed and wild salmon), mollusks, mackerel, and sardines representing the six largest imports. Tuna fisheries are conducted primarily on the high seas, whereas shrimp and salmon fisheries are a combination of live capture and aquaculture operations. For example, for high seas export fisheries to receive a comparability finding, harvesting nations may demonstrate, among other things, that they are implementing the requirements of an RFMO or intergovernmental agreement to which the U.S. is a party. Tuna is caught in numerous gear types including purse seine nets, longline, hook and line, trolling, trap, harpoon and gillnets. Marine mammals interact with several gear types used in fisheries managed by tuna regional fishery management organizations (RFMOs). They most commonly interact with or are caught in purse seine, longline, and gillnet gear. With the exception of the eastern tropical Pacific Ocean, accurate abundance and bycatch estimates for marine mammals are lacking in areas where marine mammal distribution overlaps tuna fisheries, making quantitative analysis of bycatch extremely difficult. Nevertheless, there has been progress in quantifying tuna RFMO fishery impacts on or bycatch of marine mammals and several RFMOs have either passed or introduced measures to mitigate or reduce marine mammal mortality. For example, both the Western Central Pacific Fisheries Commission and the Indian Ocean Tuna Commission have adopted measures that prohibit the intentional encirclement of marine mammals in purse seine sets and also require safe handling and release in the event that a marine mammal is encircled. Similar measures have been introduced for purse seine fisheries operating under the International Convention for the Conservation of Atlantic Tunas. Therefore, these conservation and management measures would govern the purse seine fisheries of Thailand, Vietnam, Philippines, Indonesia and China. The largest exporter is Thailand, who exported more than 93 million kilos of tuna to the United States. Thailand is both a harvesting nation, landing roughly 26 million kilos, and intermediary nation, by way of its canning operations. Currently, Thailand processes almost one-quarter of the world's canned tuna (736,000 mt in 2008). Other nations exporting more than 20 million kilos include Vietnam, the Philippines, Indonesia, Ecuador, and China. Several of these nations are also processors, including Ecuador, which is the second largest processing site accounting for almost 12% of global annual production (362,400 mt in 2008). Ecuador, which has an affirmative finding for its yellowfin tuna purse seine fisheries, exports are governed predominantly by the Agreement on the Dolphin Conservation Program Act and section 101(a)(2)(B) of the MMPA. Because these regulatory programs are in place for purse seine fisheries, import prohibitions are unlikely for such fisheries.

U.S aquaculture facilities are Category III fisheries, having a remote likelihood of marine mammal mortality and serious injury. By analogy, NMFS anticipates that most aquaculture facilities will be designated exempt in the List of Foreign Fisheries. Therefore, for aquaculture facilities classified as exempt fisheries and sited in marine mammal habitat or interacting with marine mammals, the harvesting nation must demonstrate it is prohibiting the intentional killing or serious injury of marine mammals in the course of aquaculture operations or has procedures to reliably certify that exports of fish and fish products to the United States are not the product of an intentional killing or serious injury of a marine mammal.

Therefore, NMFS anticipates that out of 122 harvesting nations, the greatest economic burden will be on the 21 nations that export more than 10 fish products, assuming that their regulatory program will include more export fisheries. This rule offers harvesting nations time to develop their regulatory program. Additionally, the consultative process and potential for financial and technological assistance will aid harvesting nations in meeting the requirements of these regulations. No U.S. industry sector would be directly affected by the rulemaking, although indirect effects may cause disruptions in the flow of seafood imports, potentially impacting U.S. businesses. Without knowing the fish products subject to a trade restriction, it is impossible to estimate how these indirect impacts will be distributed across U.S. businesses. There are several factors that suggest impacts in many instances will be small and short-lived or non-existent, though there may be potential scenarios that could result in the rule having more than negligible impacts. Additionally, if fisheries of other nations become subject to regulatory requirements that are comparable in effectiveness to requirements imposed on U.S. fishermen for conservation of marine mammals, there could be benefits to U.S. fishermen. Whether or not regulatory costs induced in foreign fisheries increase import prices enough to affect the price differential between domestic products and imported products remains to be seen. If the import prices rise enough to cause switching in the U.S. market from imports to domestically harvested fish, U.S. commercial fishermen may benefit. However, the high rate of exporting for U.S. harvested seafood is indicative that foreign markets already offer greater price incentives. Thus, it is more likely that seafood dealers will locate alternative foreign sources for any product subject to an embargo. Additionally, there are important intermediary nations in the processing of certain fish and fish products and the cost of a trade prohibition to the U.S. consumer would be contingent upon the role and behavior of intermediary nations. Therefore, based on these analyses, NMFS does not anticipate that national net benefits and costs would change significantly in the long term as a result of the implementation of the proposed action.

A final regulatory flexibility analysis (FRFA) was prepared, as required by section 604 of the Regulatory Flexibility Act (RFA). The FRFA describes the economic impact this final rule would have on small entities. A statement of the need for and objectives of this rule are contained in this **SUPPLEMENTARY INFORMATION** section of the preamble. A summary of the analysis follows. A copy of the complete FRFA is available from NMFS (see NEPA).

NMFS did not receive comments from the Chief Counsel of Advocacy for the Small Business Administration on the initial regulatory flexibility analysis (IRFA) that was published with the proposed rule. As discussed in Comment 49 above, several commenters associated with the Maine lobster industry and the Maine Department of Natural Resources expressed concern that the rule could negatively impact the Maine lobster industry and lobstermen because application of an import prohibition on Canadian lobster could prevent millions of pounds of Maine-caught lobster, processed in Canada, from being sold in the U.S. As stated in the response to Comment 49 above, NMFS believes that the efforts Maine and Canada are already undertaking to implement tracking, verification, and traceability procedures will mitigate the potential for this negative indirect impact.

Number and Description of Small Entities Regulated by the Final Action

Under the final rule, NMFS would classify foreign fisheries based on the extent that the fishing gear and methods used interact with marine mammals. After notification from NMFS, harvesting nations desiring to export fish and fish products to the United States must apply for and receive a comparability finding for their exempt and export fisheries as identified in the List of Foreign Fisheries. Such a finding would indicate that marine mammal protection measures have been implemented in the fisheries that are comparable in effectiveness to the U.S. regulatory program. In the event of import prohibitions being imposed for specific fish products, certain other fish products eligible for entry from the affected nation may be required to be accompanied by a certification of admissibility in order to be admitted into the United States.

This final rule does not directly regulate small entities; the rule requires harvesting nations that export fish and fish products to the United States to apply for and receive a comparability finding for its exempt and export fisheries. The universe of potentially indirectly affected industries includes: U.S. seafood processors, importers, retailers, and wholesalers. The exact volume and value of product, and the number of jobs supported primarily by imports within the processing, wholesale, and retail sectors cannot be ascertained based on available information. In general, however, the dominant position of imported seafood in the U.S. supply chain is indicative of the number of U.S. businesses that rely on seafood harvested by foreign entities.

Recordkeeping and Reporting Requirements

This final action contains new collection-of-information, involving limited reporting and record keeping, or other compliance requirements. To facilitate enforcement of the import prohibitions for prohibited fish products, harvesting nations with fisheries that do receive a comparability finding, that offer similar fish and fish products to those that have been prohibited from entry, may be required to submit certification of admissibility along with the fish or fish products offered for entry into the United States that are not subject to the specific import restrictions.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

No U.S. industrial sector is directly regulated by this rulemaking. However, the indirect effects of import prohibitions may cause short-term disruptions in the flow of seafood imports potentially impacting U.S. businesses. NMFS does not anticipate that national benefits and costs would change significantly in the long-term as a result of the implementation of the rule. Therefore, NMFS anticipates that the impacts on U.S. businesses engaged in trading, processing, or retailing seafood will likely be minimal.

As described above and in Section 2.1 of the Final Environmental Assessment (see NEPA), NMFS analyzed several alternatives that achieve the objective of reducing mortality of marine mammals in fishing operations. The final rule is based on the preferred alternative and is the one that offers the most flexibility while also complying with the relevant provisions of the MMPA and U.S. obligations under applicable international law, including the WTO Agreement. The flexibility offered under the rule allows harvesting nations to adopt a variety of alternatives to assess and reduce marine mammal incidental mortality and serious injury, provided the alternatives are comparable in effectiveness to the U.S. regulatory program. Because this flexibility facilitates the ability of the harvesting nations to comply, the potential for indirect adverse impacts on small entities is minimized.

The no action alternative, where NMFS would not promulgate regulations to implement the international provisions of the MMPA, may have reduced the potential indirect burden or economic impact to small entities; however, because the international provisions of the MMPA are statutory requirements, the no action alternative would be inconsistent with the MMPA. The final rule also demonstrates the U.S. commitment to achieving the conservation and sustainable management of marine mammals consistent with the statutory requirement of section 101(a)(2) of the MMPA. Additionally, the increased data collection that may result from the regulations could assist in global stock assessments of marine mammals and improve our scientific understanding of these species. Finally, the rule should help ensure that the United States is not importing fish and fish products harvested by nations that engage in the unsustainable bycatch of marine mammals in waters within and beyond any national jurisdiction.

Paperwork Reduction Act

This final rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The information collection in this final rule modifies an existing information collection that was approved under OMB Control Number 0648–0651 (Certification of Admissibility).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 216

Administrative practice and procedure, Exports, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 8, 2016.

Paul Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 216 are amended as follows:

Title 15: Commerce and Foreign Trade

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), remove the entry for 216.24 and add entries for 216.24(f)(2) and 216.24(h)(9)(iii) in numerical order under the heading 50 CFR to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
216.24(f)(2)	–0387
216.24(h)(9)(iii) ...	–0651
* * * * *	

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Title 50: Wildlife and Fisheries

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 3. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 4. In § 216.3:

■ a. Revise the definition for "Import"; and

■ b. Add definitions for "Bycatch limit", "Comparability finding", "Exempt fishery", "Exemption period", "Export fishery", "Fish and fish product", "Intermediary nation", "List of Foreign Fisheries", "Transboundary stock", and "U.S. regulatory program" in alphabetical order.

The additions and revisions read as follows:

§ 216.3 Definitions.

* * * * *

Bycatch limit means the calculation of a potential biological removal level for a particular marine mammal stock, as defined in § 229.2 of this chapter, or comparable scientific metric established by the harvesting nation or applicable regional fishery management organization or intergovernmental agreement.

* * * * *

Comparability finding means a finding by the Assistant Administrator that the harvesting nation for an export or exempt fishery has met the applicable conditions specified in § 216.24(h)(6)(iii) subject to the additional considerations for comparability determinations set out in § 216.24(h)(7).

* * * * *

Exempt fishery means a foreign commercial fishing operation determined by the Assistant Administrator to be the source of exports of commercial fish and fish products to the United States and to have a remote likelihood of, or no known, incidental mortality and serious injury of marine mammals in the course of commercial fishing operations. A commercial fishing operation that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other foreign fisheries exporting fish and fish products to the United States causes the annual removal of:

(1) Ten percent or less of any marine mammal stock's bycatch limit; or

(2) More than 10 percent of any marine mammal stock's bycatch limit, yet that fishery by itself removes 1 percent or less of that stock's bycatch limit annually; or

(3) Where reliable information has not been provided by the harvesting nation on the frequency of incidental mortality and serious injury of marine mammals caused by the commercial fishing operation, the Assistant Administrator may determine whether the likelihood of incidental mortality and serious injury is "remote" by evaluating information concerning factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, the species and

distribution of marine mammals in the area, or other factors at the discretion of the Assistant Administrator. A foreign fishery will not be classified as an exempt fishery unless the Assistant Administrator has reliable information from the harvesting nation, or other information to support such a finding.

Exemption period means the one-time, five-year period that commences January 1, 2017, during which commercial fishing operations that are the source of exports of commercial fish and fish products to the United States will be exempt from the prohibitions of § 216.24(h)(1).

Export fishery means a foreign commercial fishing operation determined by the Assistant Administrator to be the source of exports of commercial fish and fish products to the United States and to have more than a remote likelihood of incidental mortality and serious injury of marine mammals (as defined in the definition of an "exempt fishery") in the course of its commercial fishing operations. Where reliable information has not been provided by the harvesting nation on the frequency of incidental mortality and serious injury of marine mammals caused by the commercial fishing operation, the Assistant Administrator may determine whether the likelihood of incidental mortality and serious injury is more than "remote" by evaluating information concerning factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or other factors at the discretion of the Assistant Administrator that may inform whether the likelihood of incidental mortality and serious injury of marine mammals caused by the commercial fishing operation is more than "remote." Commercial fishing operations not specifically identified in the current List of Foreign Fisheries as either exempt or export fisheries are deemed to be export fisheries until the next List of Foreign Fisheries is published unless the Assistant Administrator has reliable information from the harvesting nation to properly classify the foreign commercial fishing operation. Additionally, the Assistant Administrator, may request additional information from the harvesting nation and may consider other relevant information as set forth in § 216.24(h)(3) about such commercial fishing operations and the frequency of incidental mortality and serious injury of marine mammals, to properly classify the foreign commercial fishing operation.

* * * * *

Fish and fish product means any marine finfish, mollusk, crustacean, or other form of marine life other than marine mammals, reptiles, and birds, whether fresh, frozen, canned, pouched, or otherwise prepared.

* * * * *

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the Customs laws of the United States; except that, for the purpose of any ban on the importation of fish or fish products issued under the authority of 16 U.S.C. 1371(a)(2)(B), the definition of "import" in § 216.24(f)(1)(ii) shall apply.

* * * * *

Intermediary nation means a nation that imports fish or fish products from a fishery on the List of Foreign Fisheries and re-exports such fish or fish products to the United States.

* * * * *

List of Foreign Fisheries means the most recent list, organized by harvesting nation, of foreign commercial fishing operations exporting fish or fish products to the United States, that is published in the **Federal Register** by the Assistant Administrator and that classifies commercial fishing operations according to the frequency and likelihood of incidental mortality and serious injury of marine mammals during such commercial fishing operations as either an exempt fishery or an export fishery.

* * * * *

Transboundary stock means a marine mammal stock occurring in the:

(1) Exclusive economic zones or territorial sea of the United States and one or more other coastal States; or

(2) Exclusive economic zone or territorial sea of the United States and on the high seas.

* * * * *

U.S. regulatory program means the regulatory program governing the incidental mortality and serious injury of marine mammals in the course of commercial fishing operations as specified in the Marine Mammal Protection Act and its implementing regulations.

* * * * *

■ 4. In § 216.24, the section heading is revised and paragraph (h) is added to read as follows:

§ 216.24 Taking and related acts in commercial fishing operations including tuna purse seine vessels in the eastern tropical Pacific Ocean.

* * * * *

(h) *Taking and related acts of marine mammals in foreign commercial fishing operations not governed by the provisions related to tuna purse seine vessels in the eastern tropical Pacific Ocean*—(1) *Prohibitions.* (i) As provided in section 101(a)(2) and 102(c)(3)of the MMPA, the importation of commercial fish or fish products which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of U.S. standards or caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States are prohibited. For purposes of paragraph (h) of this section, a fish or fish product caught with commercial fishing technology which results in the incidental mortality or incidental serious injury of marine mammals in excess of U.S. standards is any fish or fish product harvested in an exempt or export fishery for which a valid comparability finding is not in effect.

(ii) Accordingly, it is unlawful for any person to import, or attempt to import, into the United States for commercial purposes any fish or fish product if such fish or fish product:

(A) Was caught or harvested in a fishery that does not have a valid comparability finding in effect at the time of import; or

(B) Is not accompanied by a Certification of Admissibility where such Certification is required pursuant to paragraph (h)(9)(iv) of this section or by such other documentation as the Assistant Administrator may identify and announce in the **Federal Register** that indicates the fish or fish product was not caught or harvested in a fishery subject to an import prohibition under paragraphs (h)(1) and (h)(9)(i) of this section.

(iii) It is unlawful for any person, including exporters, transshippers, importers, processors, or wholesalers/distributors to possess, sell, purchase, offer for sale, re-export, transport, or ship in interstate or foreign commerce in the United States, any fish or fish product imported in violation of paragraph (h) of this section.

(2) *Exemptions.* (i) Exempt fisheries are exempt from requirements of paragraphs (h)(6)(iii)(B) through (E) of this section.

(A) For the purposes of paragraph (h) of this section, *harvesting nation* means the country under whose flag or jurisdiction one or more fishing vessels or other entity engaged in commercial fishing operations are documented, or which has by formal declaration or agreement asserted jurisdiction over one or more authorized or certified charter vessels, and from such vessel(s) or entity(ies) fish are caught or harvested that are a part of any cargo or shipment of fish or fish products to be imported into the United States, regardless of any intervening transshipments, exports or re-exports.

(B) [Reserved]

(ii) The prohibitions of paragraph (h)(1) of this section shall not apply during the exemption period.

(iii) Paragraph (h) of this section shall not apply to a commercial fishing operation subject to section 101(a)(2)(B) of the MMPA and its implementing regulations set out in the relevant provisions of paragraph (f) of this section which govern the incidental take of delphinids in course of commercial purse seine fishing operations for yellowfin tuna in the eastern tropical Pacific Ocean and restrictions on importation and sale of fish and fish products caught or harvested in that commercial fishing operation. Paragraph (h) of this section shall not apply with respect to large-scale driftnet fishing, which is governed by paragraph (f)(7) of this section and the restrictions it sets out on importation and sale of fish and fish products harvested by using a large-scale driftnet.

(3) *Procedures to identify foreign commercial fishing operations with incidental mortality and serious injury of marine mammals as exempt or export fisheries.* In developing the List of Foreign Fisheries in paragraph (h)(4) of this section, the Assistant Administrator:

(i) Shall periodically analyze imports of fish and fish products and identify commercial fishing operations that are the source of exports of such fish and fish products to the United States that have or may have incidental mortality or serious injury of marine mammals in the course of their commercial fishing operations.

(A) For the purposes of paragraph (h) of this section, a *commercial fishing operation* means vessels or entities that catch, take, or harvest fish (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) from the marine environment (or other areas where marine mammals occur) that results in the sale or barter of all or part of the fish caught, taken or harvested. The term includes aquaculture activities that interact with or occur in marine mammal habitat.

(B) [Reserved]

(ii) Shall notify, in consultation with the Secretary of State, each harvesting nation that has commercial fishing operations identified pursuant to paragraph (h)(3)(i) of this section and request that within 90 days of notification the harvesting nation submit reliable information about the commercial fishing operations identified, including as relevant the number of participants, number of vessels, gear type, target species, area of operation, fishing season, any information regarding the frequency of marine mammal incidental mortality and serious injury and any programs (including any relevant laws, decrees, regulations or measures) to assess marine mammal populations and to reduce incidental mortality and serious injury of marine mammals in those fisheries or prohibit the intentional killing or injury of marine mammals.

(iii) Shall review each harvesting nation's submission, evaluate any information it contains (including descriptions of its regulatory programs) and, if necessary, request additional information.

(iv) May consider other readily available and relevant information about such commercial fishing operations and the frequency of incidental mortality and serious injury of marine mammals, including: fishing vessel records; reports of on-board fishery observers; information from off-loading facilities, port-side officials, enforcement agents and officers, transshipment vessel workers and fish importers; government vessel registries; regional fisheries management organizations documents and statistical document programs; and appropriate certification programs. Other sources may include published literature and reports on fishing vessels with incidental mortality and serious injury of marine mammals from government agencies; foreign, state, and local governments; regional fishery management organizations; nongovernmental organizations; industry organizations; academic institutions; and citizens and citizen groups.

(4) *List of Foreign Fisheries.* (i) Within one year of January 1, 2017, and the year prior to the expiration of the exemption period and every four years thereafter, the Assistant Administrator, based on the information obtained in paragraph (h)(3) of this section, will publish in the **Federal Register**:

(A) A proposed List of Foreign Fisheries by harvesting nation for notice and comment; and

(B) A final List of Foreign Fisheries, effective upon publication in the **Federal Register**.

(ii) To the extent that information is available, the List of Foreign Fisheries shall:

(A) Classify each commercial fishing operation that is the source of exports of fish and fish products to the United States based on the definitions for export fishery and exempt fishery set forth in § 216.3 and identified in the List of Foreign Fisheries by harvesting nation and other defining factors including geographic location of harvest, gear-type, target species or a combination thereof;

(B) Include fishing gear type, target species, and number of vessels or other entities engaged in each commercial fishing operation;

(C) List the marine mammals that interact with each commercial fishing operation and indicate the level of incidental mortality and serious injury of marine mammals in each commercial fishing operation;

(D) Provide a description of the harvesting nation's programs to assess marine mammal stocks and estimate and reduce marine mammal incidental mortality and serious injury in its export fisheries; and

(E) List the harvesting nations that prohibit, in the course of commercial fishing operations that are the source of exports to the United States, the intentional mortality or serious injury of marine mammals unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger.

(5) *Consultations with Harvesting Nations with Commercial Fishing Operations on the List of Foreign Fisheries.* (i) Within 90 days of publication of the final List of Foreign Fisheries in the **Federal Register**, the Assistant Administrator, in consultation with the Secretary of State, shall consult with harvesting nations with commercial fishing operations identified as export or exempt fisheries as defined in § 216.3 for purposes of notifying the harvesting nation of the requirements of the Marine Mammal Protection Act and this subpart.

(ii) The Assistant Administrator, in consultation with the Secretary of State, may consult with harvesting nations for the purposes of providing notifications of deadlines under this section, ascertaining or reviewing the progress of the harvesting nation's development, adoption, implementation, or enforcement of its regulatory program governing the incidental mortality and serious injury of marine mammals in the course of commercial fishing operations for an export fishery, supplementing or clarifying information needed in conjunction with the List of Foreign Fisheries in paragraphs (h)(3) and (4) of this section, the progress report in paragraph (h)(10) of this section or an application for or reconsideration of a comparability finding in paragraphs (h)(6) and (8) of this section.

(iii) The Assistant Administrator shall, in consultation with the Secretary of State and the United States Trade Representative, consult with any harvesting nations that failed to receive a comparability finding for one or more of commercial fishing operations or for which a comparability finding is terminated and encourage the harvesting nation to take corrective action and reapply for a comparability finding in accordance with paragraph (h)(9)(iii) of this section.

(6) *Procedure and conditions for a comparability finding*—(i) *Procedures to apply for a comparability finding.* On March 1st of the year when the exemption period or comparability finding is to expire, a harvesting nation shall submit to the Assistant Administrator an application for each of its export and exempt fisheries, along with documentary evidence demonstrating that the harvesting nation has met the conditions specified in paragraph (h)(6)(iii) of this section for each of such fishery, including reasonable proof as to the effects on marine mammals of the commercial fishing technology in use in the fishery for fish or fish products exported from such nation to the United States. The Assistant Administrator may request the submission of additional supporting documentation or other verification of statements made in an application for a comparability finding.

(ii) *Procedures to issue a comparability finding.* No later than November 30th of the year when the exemption period or comparability finding is to expire, the Assistant Administrator, in response to an application from a harvesting nation for an export or exempt fishery, shall determine whether to issue to the harvesting nation, in accordance with the procedures set forth in paragraph (h)(8) of this section, a comparability finding for the fishery. In making this determination, the Assistant Administrator shall consider documentary evidence provided by the harvesting nation and relevant information readily available from other sources. If a harvesting nation provides insufficient documentary evidence in support of its application, the Assistant Administrator shall draw reasonable conclusions regarding the fishery based on readily available and relevant information from other sources, including where appropriate information concerning analogous fisheries that use the same or similar gear-type under similar conditions as the fishery, in determining whether to issue the harvesting nation a comparability finding for the fishery.

(iii) *Conditions for a comparability finding.* The following are conditions for the Assistant Administrator to issue a comparability finding for the fishery, subject to the additional considerations set out in paragraph (h)(7) of this section:

(A) For an exempt or export fishery, the harvesting nation:

(*1*) Prohibits the intentional mortality or serious injury of marine mammals in the course of commercial fishing operations in the fishery unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger; or

(*2*) Demonstrates that it has procedures to reliably certify that exports of fish and fish products to the United States are not the product of an intentional killing or serious injury of a marine mammal unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger; and

(B) For an export fishery, the harvesting nation maintains a regulatory program with respect to the fishery that is comparable in effectiveness to the U.S. regulatory program with respect to incidental mortality and serious injury of marine mammals in the course of commercial fishing operations, in particular by maintaining a regulatory program that includes, or effectively achieves comparable results as, the conditions in paragraph (h)(6)(iii)(C), (D), or (E) of this section as applicable (including for transboundary stocks).

(C) *Conditions for an export fishery operating under the jurisdiction of a harvesting nation within its EEZ (or the equivalent) or territorial sea.* In making the finding in paragraph (h)(6)(ii) of this section, with respect to an export fishery operating under the jurisdiction of a harvesting nation within its EEZ (or the equivalent) or territorial sea, the Assistant Administrator shall determine whether the harvesting nation maintains a regulatory program that provides for, or effectively achieves comparable results as, the following:

(*1*) Marine mammal assessments that estimate population abundance for marine mammal stocks in waters under the harvesting nation's jurisdiction that are incidentally killed or seriously injured in the export fishery.

(*2*) An export fishery register containing a list of all fishing vessels participating in the export fishery, including information on the number of vessels participating, the time or season and area of operation, gear type and target species.

(*3*) Regulatory requirements that include:

(*i*) A requirement for the owner or operator of a vessel participating in the export fishery to report all intentional and incidental mortality and injury of marine mammals in the course of commercial fishing operations; and

(*ii*) A requirement to implement measures in the export fishery designed to reduce the total incidental mortality and serious injury of a marine mammal stock below the bycatch limit; and

(*iii*) with respect to any transboundary stock or any other marine mammal stocks interacting with the export fishery, measures to reduce the incidental mortality and serious injury of that stock that the United States requires its domestic fisheries to take with respect to that transboundary stock or marine mammal stock.

(*4*) Implementation of monitoring procedures in the export fishery designed to estimate incidental mortality or serious injury in the export fishery, and to estimate the cumulative incidental mortality and serious injury of marine mammal stocks in waters under its jurisdiction resulting from the export fishery and other export fisheries interacting with the same marine mammal stocks, including an indication of the statistical reliability of those estimates.

(*5*) Calculation of bycatch limits for marine mammal stocks in waters under its jurisdiction that are incidentally killed or seriously injured in the export fishery.

(*6*) Comparison of the incidental mortality and serious injury of each marine mammal stock or stocks that interact with the export fishery in relation to the bycatch limit for each stock; and comparison of the cumulative incidental mortality and serious injury of each marine mammal stock or stocks that interact with the export fishery and any other export fisheries of the harvesting nation showing that these export fisheries:

(*i*) Do not exceed the bycatch limit for that stock or stocks; or

(*ii*) Exceed the bycatch limit for that stock or stocks, but the portion of incidental marine mammal mortality or serious injury for which the export fishery is responsible is at a level that, if the other export fisheries interacting with the same marine mammal stock or stocks were at the same level, would not result in cumulative incidental mortality and serious injury in excess of the bycatch limit for that stock or stocks.

(D) *Conditions for a harvesting nation's export fishery operating within the jurisdiction of another state.* In making the finding in paragraph (h)(6)(ii) of this section, with respect to a harvesting nation's export fishery operating within the jurisdiction of another state, the Assistant Administrator shall determine whether the harvesting nation maintains a regulatory program that provides for, or effectively achieves comparable results as, the following:

(*1*) Implementation in the export fishery of:

(*i*) With respect to any transboundary stock interacting with the export fishery, any measures to reduce the incidental mortality and serious injury of that stock that the United States requires its domestic fisheries to take with respect that transboundary stock; and

(*ii*) With respect to any other marine mammal stocks interacting with the export fishery while operating within the jurisdiction of the state, any measures to reduce incidental mortality and serious injury that the United States requires its domestic fisheries to take with respect to that marine mammal stock; and

(*2*) For an export fishery not subject to management by a regional fishery management organization:

(*i*) An assessment of marine mammal abundance of stocks interacting with the export fishery, the calculation of a bycatch limit for each such stock, an estimation of incidental mortality and serious injury for each stock and reduction in or maintenance of the incidental mortality and serious injury of each stock below the bycatch limit. This data included in the application may be provided by the state or another source; and

(*ii*) Comparison of the incidental mortality and serious injury of each marine mammal stock or stocks that interact with the export fishery in relation to the bycatch limit for each stock; and comparison of the cumulative incidental mortality and serious injury of each marine mammal stock or stocks that interact with the export fishery and any other export fisheries of the harvesting nation showing that these export fisheries do not exceed the bycatch limit for that stock or stocks; or exceed the bycatch limit for that stock or stocks, but the portion of incidental marine mammal mortality or serious injury for which the export fishery is responsible is at a level that, if the other export fisheries interacting with the same marine mammal stock or stocks were at the same level, would not result in cumulative incidental mortality and serious injury in excess of the bycatch limit for that stock or stocks; or

(*3*) For an export fishery that is subject to management by a regional fishery management organization, implementation of marine mammal data collection and conservation and management measures applicable to that fishery required under any applicable intergovernmental agreement or regional fisheries management organization to which the United States is a party.

(E) *Conditions for a harvesting nation's export fishery operating on the high seas under the jurisdiction of the harvesting nation or another state.* In making the finding in paragraph (h)(6)(ii) of this section, with respect to a harvesting nation's export fishery operating on the high seas under the jurisdiction of the harvesting nation or another state, the Assistant Administrator shall determine whether the harvesting nation maintains a regulatory program that provides for, or effectively achieves comparable results as, the U.S. regulatory program with respect to the following:

(*1*) Implementation in the fishery of marine mammal data collection and conservation and management measures applicable to that fishery required under any applicable intergovernmental agreement or regional fisheries management organization to which the United States is a party; and

(*2*) Implementation in the export fishery of:

(*i*) With respect to any transboundary stock interacting with the export fishery, any measures to reduce the incidental mortality and serious injury of that stock that the United States requires its domestic fisheries to take with respect that transboundary stock; and

(*ii*) With respect to any other marine mammal stocks interacting with the export fishery while operating on the high seas, any measures to reduce incidental mortality and serious injury that the United States requires its domestic fisheries to take with respect to that marine mammal stock when they are operating on the high seas.

(7) *Additional considerations for comparability finding determinations.* When determining whether to issue any comparability finding for a harvesting nation's export fishery the Assistant Administrator shall also consider:

(i) U.S. implementation of its regulatory program for similar marine mammal stocks and similar fisheries (*e.g.,* considering gear or target species), including transboundary stocks governed by regulations implementing a take reduction plan (§ 229.2 of this chapter), and any other relevant information received during consultations;

(ii) The extent to which the harvesting nation has successfully implemented measures in the export fishery to reduce the incidental mortality and serious injury of marine mammals caused by the harvesting nation's export fisheries to levels below the bycatch limit;

(iii) Whether the measures adopted by the harvesting nation for its export fishery have reduced or will likely reduce the cumulative incidental mortality and serious injury of each marine mammal stock below the bycatch limit, and the progress of the regulatory program toward achieving its objectives;

(iv) Other relevant facts and circumstances, which may include the history and nature of interactions with marine mammals in this export fishery, whether the level of incidental mortality and serious injury resulting from the fishery or fisheries exceeds the bycatch limit for a marine mammal stock, the population size and trend of the marine mammal stock, and the population level impacts of the incidental mortality or serious injury of marine mammals in a harvesting nation's export fisheries and the conservation status of those marine mammal stocks where available;

(v) The record of consultations under paragraph (h)(5) of this section with the harvesting nation, results of these consultations, and actions taken by the harvesting nation and under any applicable intergovernmental agreement or regional fishery management organization to reduce the incidental mortality and serious injury of marine mammals in its export fisheries;

(vi) Information gathered during onsite inspection by U.S. government officials of a fishery's operations;

(vii) For export fisheries operating on the high seas under an applicable intergovernmental agreement or regional fishery management organization to which the United States is a party, the harvesting nation's record of implementation of or compliance with measures adopted by that regional fishery management organization or intergovernmental agreement for data collection, incidental mortality and serious injury mitigation or the conservation and management of marine mammals; whether the harvesting nation is a party or cooperating non-party to such intergovernmental agreement or regional fishery management organization; the record of United States implementation of such measures; and whether the United

States has imposed additional measures on its fleet not required by an intergovernmental agreement or regional fishery management organization; or

(viii) For export fisheries operating on the high seas under an applicable intergovernmental agreement or regional fisheries management organization to which the United States is not a party, the harvesting nation's implementation of and compliance with measures, adopted by that regional fisheries management organization or intergovernmental agreement, and any additional measures implemented by the harvesting nation for data collection, incidental mortality and serious injury mitigation or the conservation and management of marine mammals and the extent to which such measures are comparable in effectiveness to the U.S. regulatory program for similar fisheries.

(8) *Comparability finding determinations*—(i) *Publication.* No later than November 30th of the year when the exemption period or comparability finding is to expire, the Assistant Administrator shall publish in the **Federal Register**, by harvesting nation, a notice of the harvesting nations and fisheries for which it has issued or denied a comparability finding and the specific fish and fish products that as a result are subject to import prohibitions under paragraphs (h)(1) and (9) of this section.

(ii) *Notification.* Prior to publication in the **Federal Register**, the Assistant Administrator, in consultation with the Secretary of State and, in the event of a denial of a comparability finding, with the Office of the U.S. Trade Representative, shall notify each harvesting nation in writing of the fisheries of the harvesting nation for which the Assistant Administrator is:

(A) Issuing a comparability finding;

(B) Denying a comparability finding with an explanation for the reasons for the denial of such comparability finding; and

(C) Specify the fish and fish products that will be subject to import prohibitions under paragraphs (h)(1) and (9) of this section on account of a denial of a comparability finding and the effective date of such import prohibitions.

(iii) *Preliminary comparability finding consultations.* (A) Prior to denying a comparability finding under paragraph (h)(8)(ii) of this section or terminating a comparability finding under paragraph (h)(8)(vii) of this section, the Assistant Administrator shall:

(*1*) Notify the harvesting nation that it is preliminarily denying or terminating its comparability finding and explain the reasons for that preliminary denial or termination;

(*2*) Provide the harvesting nation a reasonable opportunity to submit reliable information to refute the preliminary denial or termination of the comparability finding and communicate any corrective actions it is taking to meet the applicable conditions for a comparability finding set out in paragraph (h)(6)(iii) of this section subject to the additional considerations set out in paragraph (h)(7) of this section.

(B) The Assistant Administrator shall take into account any information it receives from the harvesting nation and issue a final comparability finding determination, notifying the harvesting nation pursuant to paragraph (h)(8)(ii) of this section of its determination and, if a denial or termination, an explanation of the reasons for the denial or termination of the comparability finding.

(C) A preliminary denial or termination of a comparability finding shall not result in import prohibitions pursuant to paragraphs (h)(1) and (9) of this section.

(iv) *Duration of a comparability finding.* Unless terminated in accordance with paragraph (h)(8)(vii) of this section or issued for a specific period pursuant to a re-application under paragraph (h)(9)(iii) of this section, a comparability finding shall remain valid for 4 years from publication or for such other period as the Assistant Administrator may specify.

(v) *Renewal of comparability finding.* To seek renewal of a comparability finding, every 4 years or prior to the expiration of a comparability finding, the harvesting nation must submit to the Assistant Administrator the application and the documentary evidence required pursuant to paragraph (h)(6)(i) of this section, including, where applicable, reasonable proof as to the effects on marine mammals of the commercial fishing technology in use in the fishery for fish or fish products exported to the United States, by March 1 of the year when its current comparability finding is due to expire.

(vi) *Procedures for a comparability finding for new foreign commercial fishing operations wishing to export to the United States.* (A) For foreign commercial fishing operations not on the List of Foreign Fisheries that are the source of new exports to the United States, the harvesting nation must notify the Assistant Administrator that the commercial fishing operation wishes to export fish and fish products to the United States.

(B) Upon notification the Assistant Administrator shall issue a provisional comparability finding allowing such imports for a period not to exceed 12 months.

(C) At least 120 days prior to the expiration of the provisional comparability finding the harvesting nation must submit to the Assistant Administrator the reliable information specified in paragraph (h)(3)(ii) of this section and the application and the applicable documentary evidence required pursuant to paragraph (h)(6)(i) of this section.

(D) Prior to expiration of the provisional comparability finding, the Assistant Administrator shall review the application and information provided and classify the commercial fishing operation as either an exempt or export fishery in accordance with paragraphs (h)(3)(iii) through (iv) and (h)(4)(ii) of this section and determine whether to issue the harvesting nation a comparability finding for the fishery in accordance with paragraph (h)(6)(ii) through (iii) of this section.

(E) If the harvesting nation submits the reliable information specified in paragraph (h)(3)(ii) of this section at least 180 days prior to expiration of the provisional comparability finding, the Assistant Administrator will review that information and classify the fishery as either an exempt or export fishery.

(vii) *Discretionary review of comparability findings.* (A) The Assistant Administrator may reconsider a comparability finding that it has issued at any time based upon information obtained by the Assistant Administrator including any progress report received from a harvesting nation; or upon request with the submission of information from the harvesting nation, any nation, regional fishery management organizations, nongovernmental organizations, industry organizations, academic institutions, citizens or citizen groups that the harvesting nation's exempt or export fishery no longer meets the applicable conditions in paragraph (h)(6)(iii) of this section. Upon receiving a request, the Assistant Administrator has the discretion to determine whether to proceed with a review or reconsideration.

(B) After such review or reconsideration and consultation with the harvesting nation, the Assistant Administrator shall, if the Assistant Administrator determines that the basis for the comparability finding no longer applies, terminate a comparability finding.

(C) The Assistant Administrator shall notify in writing the harvesting nation and publish in the **Federal Register** a notice of the termination and the specific fish and fish products that as a result are subject to import prohibitions under paragraphs (h)(1) and (9) of this section.

(9) *Imposition of import prohibitions.* (i) With respect to a harvesting nation for which the Assistant Administrator has denied or terminated a comparability finding for a fishery, the Assistant Administrator, in cooperation with the Secretaries of the Treasury and Homeland Security, shall identify and prohibit the importation of fish and fish products into the United States from the harvesting nation caught or harvested in that fishery. Any such import prohibition shall become effective 30 days after the of publication of the **Federal Register** notice referenced in paragraph (h)(8)(i) of this section and shall only apply to fish and fish products caught or harvested in that fishery.

(ii) *Duration of import restrictions and removal of import restrictions.* (A) Any import prohibition imposed pursuant to paragraphs (h)(1) and (9) of this section with respect to a fishery shall remain in effect until the Assistant Administrator issues a comparability finding for the fishery.

(B) A harvesting nation with an export fishery with a comparability finding that expired, was denied or terminated may re-apply for a comparability finding at any time by submitting an application to the Assistant Administrator, along with documentary evidence demonstrating that the harvesting nation has met the conditions specified in paragraph (h)(6)(iii) of this section, including, as applicable, reasonable proof as to the effects on marine mammals of the commercial fishing technology in use in the fishery for the fish or fish products exported from such nation to the United States.

(C) The Assistant Administrator shall make a determination whether to issue the harvesting nation that has re-applied for a comparability finding for the fishery within 90 days from the submission of complete information to the Assistant Administrator. The Assistant Administrator shall issue a comparability finding for the fishery for a specified period where the Assistant Administrator finds that the harvesting nation meets the applicable conditions in paragraph (h)(6)(iii) of this section, subject to the additional consideration for a comparability finding in paragraph (h)(7) of this section.

(D) Upon issuance of a comparability finding to the harvesting nation with respect to the fishery and notification in writing to the harvesting nation, the Assistant Administrator, in cooperation with the Secretaries of Treasury and Homeland Security, shall publish in the **Federal Register** a notice of the comparability finding and the removal of the corresponding import prohibition effective on the date of publication in the **Federal Register**.

(iii) *Certification of admissibility.* (A) If fish or fish products are subject to an import prohibition under paragraphs (h)(1) and (9) of this section, the Assistant Administrator, to avoid circumvention of the import prohibition, may require that the same or similar fish and fish products caught or harvested in another fishery of the harvesting nation and not subject to the prohibition be accompanied by a certification of admissibility by paper or electronic equivalent filed through the National Marine Fisheries Service message set required in the International Trade Data System. No certification of admissibility shall be required for a fish product for which it is infeasible to substantiate the attestation that the fish or fish products do not contain fish or fish products caught or harvested in a fishery subject to an import prohibition. The certification of admissibility may be in addition to any other applicable import documentation requirements.

(B) The Assistant Administrator shall notify the harvesting nation of the fisheries and the fish and fish products to be accompanied by a certification of admissibility and provide the necessary documents and instruction.

(C) The Assistant Administrator, in cooperation with the Secretaries of Treasury and Homeland Security, shall as part of the **Federal Register** notice referenced in paragraph (h)(8)(i) of this section, publish a list of fish and fish products, organized by harvesting nation, required to be accompanied by a certification of admissibility. Any requirement for a certification of admissibility shall be effective 30 days after the publication of such notice in the **Federal Register**.

(D) For each shipment, the certification of admissibility must be properly completed and signed by a duly authorized official or agent of the harvesting nation and subject to validation by a responsible official(s) designated by the Assistant Administrator. The certification must also be signed by the importer of record and submitted in a format (electronic facsimile [fax], the Internet, etc.) specified by the Assistant Administrator.

(iv) *Intermediary nation.* (A) For purposes of this paragraph (h)(9), and in applying the definition of an "intermediary nation," an import into the intermediary nation occurs when the fish or fish product is released from a harvesting nation's customs jurisdiction and enters the customs jurisdiction of the intermediary nation or when the fish and fish products are entered into a foreign trade zone of the intermediary nation for processing or transshipment. For other purposes, "import" is defined in § 216.3.

(B) No fish or fish products caught or harvested in a fishery subject to an import prohibition under paragraphs (h)(1) and (9) of this section, may be imported into the United States from any intermediary nation.

(C) Within 30 days of publication of the **Federal Register** notice described in paragraph (h)(8)(i) of this section specifying fish and fish products subject to import prohibitions under paragraphs (h)(1) and (9) of this section, the Assistant Administrator shall, based on readily available information, identify intermediary nations that may import, and re-export to the United States, fish and fish products from a fishery subject to an import prohibition under paragraphs (h)(1) and (h)(9)(i) of this section and notify such nations in writing that they are subject to action under paragraph (h)(9)(iv)(D) of this section with respect to the fish and fish products for which the Assistant Administer identified them.

(D) Within 60 days from the date of notification, an intermediary nation notified pursuant to paragraph (h)(9)(iv)(C) of this section must certify to the Assistant Administrator that it:

(*1*) Does not import, or does not offer for import into the United States, fish or fish products subject to an import prohibition under paragraphs (h)(1) and (h)(9)(i) of this section; or

(*2*) Has procedures to reliably certify that exports of fish and fish products from the intermediary nation to the United States do not contain fish or fish products caught or harvested in a fishery subject to an import prohibition under paragraphs (h)(1) and (h)(9)(i) of this section.

(E) The intermediary nation must provide documentary evidence to support its certification including information demonstrating that:

(*1*) It has not imported in the preceding 6 months the fish and fish products for which it was notified under paragraph (h)(9)(iv)(C) of this section; or

(*2*) It maintains a tracking, verification, or other scheme to reliably certify on either a global, individual shipment or other appropriate basis that fish and fish products from the intermediary nation offered for import to the United States do not contain fish or fish products caught or harvested in a fishery subject to an import prohibition under paragraphs (h)(1) and (h)(9)(i) of this section and for which it was notified under paragraph (h)(9)(iv)(C) of this section.

(F) No later than 120 days after a notification pursuant to paragraph (h)(9)(iv)(C) of this section, the Assistant Administrator will review the documentary evidence provided by the intermediary nation under paragraphs (h)(9)(iv)(D) and (E) of this section and determine based on that information or other readily available information whether the intermediary nation imports, or offers to import into the United States, fish and fish products subject import prohibitions and, if so, whether the intermediary nation has procedures to reliably certify that exports of fish and fish products from the intermediary nation to the United States do not contain fish or fish products subject to import prohibitions under paragraphs (h)(1) and (9) of this section, and notify the intermediary nation of its determination.

(G) If the Assistant Administrator determines that the intermediary nation does not have procedures to reliably certify that exports of fish and fish products from the intermediary nation to the United States do not contain fish or fish products caught or harvested in a fishery subject to an import prohibition under paragraphs (h)(1) and (h)(9)(i) of this section, the Assistant Administrator, in cooperation with the Secretaries of the Treasury and Homeland Security, will file with the Office of the Federal Register a notice announcing the fish and fish products exported from the intermediary nation to the United States that are of the same species as, or similar to, fish or fish products subject to an import prohibition under paragraphs (h)(1) and (h)(9)(i) of this section that may not be imported into the United States as a result of the determination. A prohibition under this paragraph shall not apply to any fish or fish product for which the intermediary nation was not identified under paragraph (h)(9)(iv)(C) of this section.

(H) The Assistant Administrator will review determinations under this paragraph upon the request of an intermediary nation. Such requests must be accompanied by specific and detailed supporting information or documentation indicating that a review or reconsideration is warranted. Based upon such information and other relevant information, the Assistant Administrator may determine that the intermediary nation should no longer be subject to an import prohibition under paragraph (h)(9)(iv)(G) of this section. If the Assistant Administrator makes such a determination, the Assistant Administrator, in cooperation with the Secretaries of the Treasury and Homeland Security, shall lift the import prohibition under this paragraph and publish notification of such action in the **Federal Register**.

(10) *Progress report for harvesting nations with export fisheries.* (i) A harvesting nation shall submit, with respect to an exempt or export fishery, a progress report to the Assistant Administrator documenting actions taken to:

(A) Develop, adopt and implement its regulatory program; and

(B) Meet the conditions in paragraph (h)(6)(iii) of this section, including with respect to reducing or maintaining incidental mortality and serious injury of marine mammals below the bycatch limit for its fisheries.

(ii) The progress report should include the methods the harvesting nation is using to obtain information in support of a comparability finding and a certification by the harvesting nation of the accuracy and authenticity of the information contained in the progress report.

(iii) The first progress report will be due two years prior to the end of exemption period and every four years thereafter on or before July 31.

(iv) The Assistant Administrator may review the progress report to monitor progress made by a harvesting nation in developing its regulatory program or to reconsider a comparability finding in accordance with paragraph (h)(8)(vi) of this section.

(11) *International cooperation and assistance.* Consistent with the authority granted under Marine Mammal Protection Act at 16 U.S.C. 1378 and the availability of funds, the Assistant Administrator may:

(i) Provide appropriate assistance to harvesting nations identified by the Assistant Administrator under paragraph (h)(5) of this section with respect to the financial or technical means to develop and implement the requirements of this section;

(ii) Undertake, where appropriate, cooperative research on marine mammal assessments for abundance, methods to estimate incidental mortality and serious injury and technologies and techniques to reduce marine mammal incidental mortality and serious injury in export fisheries;

(iii) Encourage and facilitate, as appropriate, the voluntary transfer of appropriate technology on mutually agreed terms to assist harvesting nations in qualifying for a comparability finding under paragraph (h)(6) of this section; and

(iv) Initiate, through the Secretary of State, negotiations for the development of bilateral or multinational agreements with harvesting nations to conserve marine mammals and reduce the incidental mortality and serious injury of marine mammals in the course of commercial fishing operations.

(12) *Consistency with international obligations.* The Assistant Administrator shall ensure, in consultation with the Department of State and the Office of the United States Trade Representative that any action taken under this section, including any action to deny a comparability finding or to prohibit imports, is consistent with the international obligations of the United States, including under the World Trade Organization Agreement.

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Part V

Environmental Protection Agency

40 CFR Parts 87 and 1068

Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 87 and 1068

[EPA–HQ–OAR–2014–0828; FRL–9950–15–OAR]

RIN 2060–AS31

Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the Administrator finds that elevated concentrations of greenhouse gases in the atmosphere endanger the public health and welfare of current and future generations within the meaning of section 231(a)(2)(A) of the Clean Air Act (CAA, or Act). She makes this finding specifically with respect to the same six well-mixed greenhouse gases—carbon dioxide (CO_2), methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—that together were defined as the air pollution in the 2009 Endangerment Finding under section 202(a) of the CAA and that together constitute the primary cause of the climate change problem. The Administrator also finds that emissions of those six well-mixed greenhouse gases from certain classes of engines used in certain aircraft are contributing to the air pollution—the aggregate group of the same six greenhouse gases—that endangers public health and welfare under CAA section 231(a)(2)(A).

DATES: These findings are effective on September 14, 2016.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2014–0828. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy in the EPA's docket. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Lesley Jantarasami, Office of Atmospheric Programs, Climate Change Division, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Mail Code 6207–A, Washington, DC 20460; Telephone number: (202) 343–9990; Email address: *ghgendangerment@epa.gov*. For additional information regarding these final findings, please go to the Web site *http://www3.epa.gov/otaq/climate/regs-aviation.htm*.

SUPPLEMENTARY INFORMATION:

Judicial Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by October 14, 2016. This final action is a nationally applicable action because it triggers the EPA's statutory duty to promulgate aircraft engine emission standards under CAA section 231, which are nationally applicable regulations and for which judicial review will be available only in the U.S. Court of Appeals for the District of Columbia Circuit. In the alternative, even if this action were considered to be only locally or regionally applicable, the Administrator determines that it has nationwide scope and effect within the meaning of CAA section 307(b)(1) both because of the obligation to establish standards under CAA section 231 that it triggers and because it concerns risks from GHG pollution and contributions to such pollution that occur across the nation. Under CAA section 307(d)(7)(B), only an objection to this final action that was raised with reasonable specificity during the period for public comment can be raised during judicial review. This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to [EPA] that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of this rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, William Jefferson Clinton Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344–A) Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

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I. General Information

A. Does this action apply to me?

These final findings trigger new duties that apply to the EPA but do not themselves apply new requirements to other entities outside the federal government. Specifically, in issuing these final findings that emissions of the six well-mixed GHGs from certain classes of engines used in certain aircraft cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, the EPA becomes subject to a duty under CAA section 231 to propose and promulgate aircraft engine emission standards applicable to emissions of that air pollutant from those classes of engines. We are anticipating indicating an expected timeline for proposed GHG emission standards for the classes of aircraft engines included in the contribution finding in EPA's Unified Agenda of Federal Regulatory and Deregulatory Actions. Only those future standards will apply to and have an effect on other entities outside the federal government. Entities potentially interested in this final action include those that manufacture and sell aircraft engines and aircraft in the United States. Categories that may be regulated in a future regulatory action include:

Category	NAICS [a] Code	SIC [b] Code	Examples of Potentially Affected Entities [1]
Industry	3364412	3724	Manufacturers of new aircraft engines.
Industry	336411	3721	Manufacturers of new aircraft.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this final action. This table lists the types of entities that the EPA is now aware could potentially have an interest in this final action. By issuing these final findings under CAA section 231(a)(2)(A) regarding emissions of greenhouse gases from aircraft engines, the EPA is now required to undertake a separate notice and comment rulemaking to propose and issue emission standards applicable to greenhouse gas emissions from the classes of aircraft engines subject to the findings, and the Federal Aviation Administration (FAA) is to prescribe regulations to ensure compliance with EPA's future emissions standards pursuant to CAA section 232. Other types of entities not listed in the table could also be interested and potentially affected by subsequent actions at some future time. If you have any questions regarding the scope of this final action, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Introduction: Overview and Context for This Final Action

A. Summary

Pursuant to CAA section 231(a)(2)(A), the Administrator finds that emissions of the six well-mixed[2] greenhouse gases (GHGs) from certain classes of aircraft engines used in certain types of aircraft (referred to interchangeably as "covered aircraft" or "US covered aircraft" throughout this document) contribute to air pollution that may reasonably be anticipated to endanger the public health and welfare of current and future generations. This final action follows the Administrator's proposed findings,[3] and responds to public comments submitted to the EPA following that proposal. It is based on careful consideration of the scientific evidence, as well as a thorough review of the public comments. In light of the large number of comments received and overlap between many comments, EPA has not responded to each comment individually. Instead, EPA has summarized and provided responses to each significant argument, assertion and question contained within the totality of these comments. Covered aircraft are those aircraft to which the International Civil Aviation Organization (ICAO) has agreed the recently recommended international CO_2 standard will apply[4]: Subsonic jet aircraft with a maximum takeoff mass (MTOM) greater than 5,700 kilograms and subsonic propeller-driven (*e.g.,* turboprop) aircraft with a MTOM greater than 8,618 kilograms. Examples of covered aircraft include smaller jet aircraft such as the Cessna Citation CJ3+ and the Embraer E170, up to and including the largest commercial jet aircraft—the Airbus A380 and the Boeing 747. Other examples of covered aircraft include larger turboprop aircraft, such as the ATR 72 and the Bombardier Q400.

In this final action, the EPA is informed by and places considerable weight on the extensive scientific and technical evidence in the record supporting the 2009 Endangerment and Cause or Contribute Findings under CAA section 202(a) (hereafter, collectively referred to as the 2009 Endangerment Finding).[5] This includes the major, peer-reviewed scientific assessments that were used to address the question of whether elevated concentrations of GHGs in the atmosphere endanger public health and welfare under CAA section 202(a), as well as the analytical framework and conclusions upon which the EPA relied in making that finding. The Administrator's view is that the body of scientific evidence amassed in the record for the 2009 Endangerment Finding also compellingly supports an endangerment finding under CAA section 231(a)(2)(A). Furthermore, this finding under section 231(a)(2)(A) reflects the EPA's careful consideration not only of the scientific and technical record for the 2009 Endangerment Finding, but also of science assessments released since 2009, which, as illustrated below, strengthen and further support the judgment that GHGs in the atmosphere may reasonably be anticipated to endanger the public health and welfare of current and future generations. No information or assessments published since late 2009 suggest that it would be reasonable for the EPA to now reach a different or contrary conclusion for purposes of CAA section 231(a)(2)(A) than the Agency reached for purposes of section 202(a).

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[1] Manufacturers of new aircraft engines refers to manufacturers of new type engines and in-production engines, and manufacturers of new aircraft refers to manufacturers of new type aircraft and in-production aircraft.

[2] The term "well-mixed GHGs"—used both in the definition of "air pollution" in the endangerment finding and in the definition of "air pollutant" in the cause or contribute finding—is based on the fact that these gases are sufficiently long lived in the atmosphere such that, once emitted, concentrations of each gas become well mixed throughout the entire global atmosphere. These shared attributes are one of five primary reasons that the EPA considers the six gases as an aggregate group rather than as individual gases. See section IV.B for more information on the definition of "air pollution" and section V.A for more information on the definition of the "air pollutant."

[3] U.S. EPA, 2015: *Proposed Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare and Advance Notice of Proposed Rulemaking; Proposed Rule,* 80 **Federal Register** (FR) 37758 (July 1, 2015).

[4] ICAO, 2013: *CAEP/9 Agreed Certification Requirement for the Aeroplane CO2 Emissions Standards,* Circular (Cir) 337, 40 pp, AN/192, Available at: *http://www.icao.int/publications/catalogue/cat_2016_en.pdf* (last accessed May 9, 2016). The ICAO Circular 337 is found on page 87 of the catalog and is copyright protected; Order No. CIR337.

[5] U.S. EPA, 2009: *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule,* 74 FR 66496 (December 15, 2009).

The Administrator defines the "air pollution" referred to in section 231(a)(2)(A) of the CAA to be the combined mix of CO_2, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride (henceforth the six "well-mixed GHGs"). This is the same definition that was used for the finding for purposes of section 202(a). It is the Administrator's judgment that the total body of scientific evidence compellingly supports a positive endangerment finding that elevated concentrations of the six well-mixed GHGs constitute air pollution that endangers both the public health and welfare of current and future generations within the meaning of CAA section 231(a)(2)(A). The Administrator is not at this time making a finding regarding whether other substances emitted from aircraft engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.

Under CAA section 231(a)(2)(A), the Administrator must also determine whether emissions of any air pollutant from a class or classes of aircraft engines cause or contribute to the air pollution that may reasonably be anticipated to endanger public health or welfare. Following the rationale outlined in the 2009 Endangerment Finding, the Administrator in this action is using the same definition of the air pollutant as was used for purposes of section 202(a) for purposes of making the cause or contribute determination under section 231(a)(2)(A)—that is, the aggregate group of the same six well-mixed GHGs. With respect to this pollutant, based on the data summarized in section V.B, the Administrator finds that emissions of the six well-mixed GHGs from aircraft engines used in covered aircraft contribute to the air pollution that endangers public health and welfare under section 231(a)(2)(A). The Administrator is not at this time making a cause or contribute finding regarding GHG emissions, or emissions of other substances, from engines used in non-covered aircraft.

The Administrator's final findings come in response to a citizen petition submitted by Friends of the Earth, Oceana, the Center for Biological Diversity, and Earthjustice (Petitioners) requesting that the EPA issue an endangerment finding and standards under CAA section 231(a)(2)(A) for the GHG emissions from aircraft. Further, the EPA anticipates that the 39th ICAO Assembly will approve a final CO_2 emissions standard in October 2016, and that subsequently, ICAO will formally adopt the final CO_2 emissions standard in March 2017. These final endangerment and cause or contribute findings for aircraft engine GHG emissions are also part of preparing for a subsequent domestic rulemaking process under CAA section 231. If an international standard is approved and finalized by ICAO, member states that wish to use aircraft in international transportation will then be required under the Chicago Convention[6] to adopt standards that are of at least equivalent stringency to those set by ICAO. Section II.D provides additional discussion of the international aircraft standard-setting process. This document does not take action or respond to comments on the 2015 U.S. EPA Aircraft Greenhouse Gas Emissions Advance Notice of Proposed Rulemaking (henceforth the "2015 ANPR"),[7] which discussed such standards. Technical issues and comments for the 2015 ANPR would be addressed in a future notice of proposed rulemaking related to such standards.

B. Background Information Helpful to Understanding This Final Action

1. Greenhouse Gases and Their Effects

GHGs in the atmosphere have the effect of trapping some of the Earth's heat that would otherwise escape to space. GHGs are both naturally occurring and anthropogenic. The primary GHGs directly emitted by human activities include CO_2, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Of these six gases, two (CO_2 and nitrous oxide) are emitted by aircraft engines.

These six gases, once emitted, remain in the atmosphere for decades to centuries. Thus, they become well mixed globally in the atmosphere, and their concentrations accumulate when emissions exceed the rate at which natural processes remove them from the atmosphere. Observations of the Earth's globally averaged combined land and ocean surface temperature over the period 1880 to 2012 show a warming of 0.85 degrees Celsius or 1.53 degrees Fahrenheit.[8] The Intergovernmental Panel on Climate Change's (IPCC) 2013–2014 Fifth Assessment Report concluded that heating effect caused by the human-induced buildup of these and other GHGs in the atmosphere, plus other human activities (*e.g.*, land use change and aerosol emissions), is extremely likely (>95 percent likelihood) to be the cause of most of the observed global warming since the mid-20th century.[9] Further information about climate change and its impact on health, society, and the environment is included in the record for the 2009 Endangerment Finding. The relevant scientific information from that record has also been included in the docket for this determination under CAA section 231(a)(2)(A) (EPA–HQ–OAR–2014–0828). Section IV of this preamble discusses this information, as well as information from the most recent scientific assessments, in the context of the Administrator's endangerment finding under CAA section 231.

The U.S. transportation sector constitutes a meaningful part of total U.S. and global anthropogenic GHG emissions. In 2014, aircraft remained the single largest GHG-emitting transportation source not yet subject to any GHG standards. Aircraft clearly contribute to U.S. transportation emissions, accounting for 12 percent of all U.S. transportation GHG emissions and representing more than 3 percent of total U.S. GHG emissions in 2014.[10]

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[6] ICAO, 2006: *Convention on International Civil Aviation, Ninth Edition,* Document 7300/9, 114 pp. Available at: *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed May 9, 2016).

[7] 80 FR 37758 (July 1, 2015).

[8] IPCC, 2013: *Summary for Policymakers. In: Climate Change 2013: The Physical Science Basis.* Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, 29 pp.

[9] Ibid.

[10] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–

Globally, U.S. aircraft GHG emissions represent 29 percent of all global aircraft GHG emissions and 0.5 percent of total global GHG emissions. Section V of this preamble provides detailed information on aircraft GHG emissions in the context of the Administrator's cause or contribute finding under CAA section 231(a)(2)(A).

2. Statutory Basis for This Final Action

Section 231(a)(2)(A) of the CAA states that "The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in [her] judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare."

Before the Administrator may propose and issue final standards addressing emissions of an air pollutant under section 231, the Administrator must satisfy a two-step test. First, the Administrator must decide whether, in her judgment, the air pollution under consideration may reasonably be anticipated to endanger public health or welfare. Second, the Administrator must decide whether, in her judgment, emissions of an air pollutant from certain classes of aircraft engines cause or contribute to this air pollution.[11] If the Administrator answers both questions in the affirmative, she must propose and issue final standards under section 231. *See Massachusetts* v. *EPA,* 549 U.S. 497, 533 (2007) (interpreting analogous provision in CAA section 202). Section III of this document summarizes the legal framework for this final action under CAA section 231. Typically, past endangerment and cause or contribute findings have been proposed and promulgated concurrently with proposed and promulgated standards under various sections of the CAA, including section 231. In those actions, public comment was taken on the proposed findings as part of the notice and comment process for the proposed emission standards. *See, e.g.,* Rulemaking for non-road compression-ignition engines under section 213(a)(4) of the CAA, Proposed Rule at 58 FR 28809, 28813–14 (May 17, 1993), Final Rule at 59 FR 31306, 31318 (June 17, 1994); Rulemaking for highway heavy-duty diesel engines and diesel sulfur fuel under sections 202(a) and 211(c) of the CAA, Proposed Rule at 65 FR 35430 (June 2, 2000), and Final Rule at 66 FR 5002 (January 18, 2001). However, there is no requirement that the Administrator propose or finalize the endangerment and cause or contribute findings concurrently with the related standards. See 74 FR 66502 (December 15, 2009). As explained in the 2009 Endangerment Finding, nothing in section 202(a) requires the EPA to propose or issue endangerment and cause or contribute findings in the same rulemaking, and Congress left the EPA discretion to choose an approach that satisfied the requirements of section 202(a). See id. The same analysis applies to section 231, which is analogous to section 202(a). The EPA is choosing to finalize these findings at this time for a number of reasons, including its previous commitment to issue such findings in response to a 2007 citizens' petition.[12]

The Administrator has applied the rulemaking provisions of CAA section 307(d) to this action, pursuant to CAA section 307(d)(1)(V), which provides that the provisions of 307(d) apply to "such other actions as the Administrator may determine." [13] CAA section 307(d) provides specific procedural requirements for the EPA to follow in taking certain rulemaking actions under the CAA, that apply in lieu of the otherwise applicable provisions of the Administrative Procedure Act, 5 U.S.C. 553–557, and 706. *See,* CAA section 307(d)(1). Any standard-setting rulemaking under section 231 will also be subject to the notice and comment rulemaking procedures under 307(d), as provided in CAA section 307(d)(1)(F) (applying the provisions of 307(d) to the promulgation or revision of any aircraft emission standard under section 231). Thus, these findings were subject to the same rulemaking procedures and requirements, as applicable, as would have applied if they had been part of a standard-setting rulemaking.

C. The EPA's Responsibilities Under the Clean Air Act

The CAA provides broad authority to combat air pollution to protect public health and welfare and the environment. Cars, trucks, construction equipment, airplanes, and ships, as well as a broad range of electricity generation, industrial, commercial and other facilities, are subject to various CAA programs. Many of these programs are targeted at ensuring protection of public health and welfare with a margin of safety, others are directed at encouraging improved industrial emissions performance and use of lesser polluting technologies and processes, and some address the prevention of adverse environmental effects. Implementation of the Act over the past four decades has resulted in significant reductions in air pollution that have benefited human health and the environment. The EPA's duties regarding aircraft air pollution emissions under CAA section 231 reflect a combination of the CAA's goals to protect public health and welfare and encourage improved emissions performance. This is shown by section 231(a)(2)(A)'s directive that EPA first identify whether emissions of aircraft engine air pollutants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare (which is broadly defined in section 302(h) of the CAA).[14] This is also shown by section 231(b)'s subsequent requirement that EPA's standards, which may require improved emissions performance over the *status quo,* provide sufficient time for the development and application of requisite technology to meet emission standards, after consideration of costs.

1. The EPA's Regulation of Greenhouse Gases

In *Massachusetts* v. *EPA,* 549 U.S. 497 (2007), the Supreme Court found that GHGs are air pollutants that can be regulated under the CAA. The Court held that the Administrator must determine whether emissions of GHGs from new motor vehicles cause or contribute to air pollution which may

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16–002, April 2016. Available at: *www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html* (last accessed June 14, 2016).

[11] To clarify the distinction between air pollution and air pollutant, in the context of GHGs, the air pollution is the atmospheric concentrations and can be thought of as the total, cumulative stock of GHGs in the atmosphere. The air pollutant, on the other hand, is the emissions of GHGs and can be thought of as the flow that changes the size of the total stock.

[12] Center for Biological Diversity, Center for Food Safety, Friends of the Earth, International Center for Technology Assessment, and Oceana, 2007: Petition for Rulemaking Under the Clean Air Act to Reduce the Emissions of Air Pollutants from Aircraft the Contribute to Global Climate Change, December 31, 2007. Available at *http://www3.epa.gov/otaq/aviation.htm* (last accessed April 8, 2016). EPA, 2012: Response to the Petition for Rulemaking Under the Clean Air Act to Reduce the Emission of Air Pollutants from Aircraft that Contribute to Global Climate Change, June 14, 2012. Available at *http://www3.epa.gov/otaq/aviation.htm* (last accessed April 8, 2016).

[13] As the Administrator is applying the provisions of section 307(d) to this rulemaking under section 307(d)(1)(V), we need not determine whether those provisions would apply to this action under section 307(d)(1)(F).

[14] Previously the EPA has made the prerequisite endangerment and cause or contribute findings under CAA section 231(A) that formed the basis to begin addressing the issue of various aircraft pollutants including NO_X aircraft pollution. U.S. EPA, "Control of Air Pollution from Aircraft and Aircraft Engines, Emission Standards and Test Procedures for Aircraft." Final Rule, 38 FR 19088 (July 17, 1973). See also section IV.B.7.d of this preamble for a discussion of previous NO_X section 231(A) findings.

reasonably be anticipated to endanger public health and/or welfare, or whether the science is too uncertain to make a reasoned decision. In making these decisions, the Administrator was bound by the provisions of section 202(a) of the CAA. The Supreme Court decision resulted from a petition for rulemaking under section 202(a) filed by more than a dozen environmental, renewable energy, and other organizations.

Following the Supreme Court decision, the EPA proposed (74 FR 18886, April 24, 2009) and then finalized (74 FR 66496, December 15, 2009) the 2009 Endangerment Finding, which can be summarized as follows:

- Endangerment Finding: The Administrator found that the then-current and projected concentrations of the combined mix in the atmosphere of the six well-mixed GHGs—CO_2, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—endanger the public health and welfare of current and future generations.
- Cause or Contribute Finding: The Administrator found that the combined emissions of the six well-mixed GHGs from new motor vehicles and new motor vehicle engines contribute to the GHG pollution which threatens public health and welfare.

The Administrator made both of these findings with respect to the six well-mixed GHGs, recognizing that CAA section 202(a) sources emit only four of the six substances. The findings did not themselves impose any requirements on industry or other entities. However, these findings compelled the EPA to promulgate GHG emission standards for new motor vehicles under section 202(a). Subsequently, in May 2010 the EPA, in collaboration with the National Highway Traffic Safety Administration (NHTSA), finalized Phase 1 GHG emission standards for light-duty vehicles (2012–2016 model years).[15] This was followed in August 2011 by adoption of the first-ever GHG emission standards for heavy-duty engines and vehicles (2014–2018 model years).[16] On August 29, 2012, the EPA finalized the second phase of the GHG emission standards for light-duty vehicles (2017–2025 model years), further reducing GHG emissions from light-duty vehicles.[17] In 2014, the President directed the EPA and the Department of Transportation to set standards in 2016 that further increase fuel efficiency and reduce GHG emissions from medium- and heavy-duty vehicles.[18]

The GHG rules for cars and trucks have been supported by a broad range of stakeholders, including states, major automobile and truck manufacturers, and environmental and labor organizations. Together these new standards for cars and trucks are resulting in significant reductions in GHG emissions, and over the lifetime of these vehicles GHG emissions will have been reduced more than 6.25 billion metric tons.[19] [20]

On June 25, 2013, President Obama announced a Climate Action Plan that set forth a series of executive actions to further reduce GHGs, prepare the U.S. for the impacts of climate change, and lead international efforts to address global climate change.[21] As part of the Climate Action Plan, the President issued a Presidential Memorandum directing the EPA to work expeditiously to complete carbon pollution standards for the power sector.[22] In August 2015, after notice and comment rulemaking, the EPA finalized two carbon pollution rulemakings: One for new, modified, and reconstructed electric utility generating units[23] and another for existing power plants.[24]

In the Climate Action Plan, the President also indicated that the United States was working internationally to make progress in a variety of areas and specifically noted the progress being made by ICAO to develop global CO_2 emission standards for aircraft.[25] The final endangerment and cause or contribute findings for aircraft GHG emissions under section 231(a)(2)(A) of the CAA are a preliminary but necessary first step to begin to address GHG emissions from the aviation sector, the highest-emitting category of transportation sources that the EPA has not yet addressed. As presented in more detail in Section V of this document, total U.S. aircraft GHG emissions in 2014 represented 12 percent of GHG emissions from the U.S. transportation sector,[26] and in 2010, the latest year with complete global emissions data, U.S. aircraft GHG emissions represented 29 percent of global aircraft GHG emissions.[27] [28] U.S. aircraft GHG emissions are projected to increase by 43 percent over the next two decades.[29]

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[15] U.S. EPA, 2010: *Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule,* 75 FR 25324 (May 7, 2010).

[16] U.S. EPA, 2011: *Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles; Final Rule,* 76 FR 57106 (September 15, 2011).

[17] U.S. EPA, 2012: *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards; Final Rule,* 77 FR 62623 (October 15, 2012).

[18] Executive Office of the President, 2014: *Remarks by the President on Fuel Efficiency Standards of Medium and Heavy-Duty Vehicles,* Office of the Press Secretary, February 18. Available at: *https://www.whitehouse.gov/the-press-office/2014/02/18/remarks-president-fuel-efficiency-standards-medium-and-heavy-duty-vehicl* (last accessed April 27, 2016).

[19] U.S. EPA, 2012: *EPA and NHTSA Set Standards to Reduce Greenhouse Gases and Improve Fuel Economy for Model Years 2017–2025 Cars and Light Trucks.* Document No. EPA–420–F–12–051, 10 pp. Available at *http://www.epa.gov/otaq/climate/documents/420f12051.pdf* (last accessed April 27, 2016). See also Table 7.4–2 in U.S. EPA, 2012: *Regulatory Impact Analysis: Final Rulemaking for 2017–2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards and Corporation Average Fuel Economy Standards,* EPA–420–R–12–016, 555 pp. Available at: *https://www3.epa.gov/otaq/climate/documents/420r12016.pdf* (last accessed April 27, 2016).

[20] U.S. EPA, 2011: *Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium-and Heavy-Duty Engines and Vehicles; Final Rule,* 76 FR 57106 (September 15, 2011).

[21] Executive Office of the President, 2013: *The President's Climate Action Plan,* June 25, 21 pp. Available at: *http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf* (last accessed April 8, 2016).

[22] Executive Office of the President, 2013: *Presidential Memorandum—Power Sector Carbon Pollution Standards,* Office of the Press Secretary, June 25. Available at: *http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards* (last accessed April 8, 2016).

[23] U.S. EPA, 2015: *Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units; Final Rule,* 80 FR 64510 (October 23, 2015).

[24] U.S. EPA, 2014: *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule,* 80 FR 64661 (October 23, 2015). On February 9, 2016 the Supreme Court stayed this rule pending judicial review. The Court's stay order does not articulate a basis for the stay and does not address the merits of the rule.

[25] Executive Office of the President, 2013: *The President's Climate Action Plan, June 25, 21 pp.* Available at *http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf* (last accessed April 8, 2016).

[26] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html* (last accessed June 14, 2016).

[27] Ibid.

[28] IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change.* Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, pp. 599–670.

[29] As discussed in section V.B.4.c, fuel burn growth rates for air carriers and general aviation aircraft operating on jet fuel are projected to grow by 43 percent from 2010 to 2036, and this provides a scaling factor for growth in GHG emissions which would increase at a similar rate as the fuel burn by 2030, 2036, and 2040. FAA, 2016: *FAA Aerospace Forecast Fiscal Years 2016–2036,* 94 pp. Available at *https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_*

See section V of this preamble for more information about the data sources that comprise the aircraft GHG emissions inventory.

2. Background on the Aircraft Petition, the 2008 Advance Notice of Proposed Rulemaking, and the D.C. District Court Decision

Section 231(a)(2)(A) of the CAA directs the Administrator of the EPA to, from time to time, propose aircraft engine emissions standards applicable to the emission of any air pollutant from any classes of aircraft engines which in her judgment causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare.

On December 5, 2007, Friends of the Earth, Oceana, the Center for Biological Diversity, Earthjustice, and others (Petitioners) sent a letter to the EPA petitioning the Agency to undertake rulemaking regarding GHG emissions from aircraft.[30] Specifically, Petitioners requested that the EPA make a finding that GHG emissions from aircraft engines “may reasonably be anticipated to endanger public health and welfare” and that the EPA promulgate standards for GHG emissions from aircraft.

Following the Supreme Court's decision in *Massachusetts* v. *EPA* in 2007, the EPA issued an advance notice of proposed rulemaking (ANPR) in 2008 presenting information relevant to potentially regulating GHGs under the Act and soliciting public comment on how to respond to the Court's ruling and the potential ramifications of the Agency's decision to regulate GHGs under the CAA. This ANPR described and solicited comment on numerous petitions the Agency had received to regulate GHG emissions from both stationary and mobile sources, including aircraft. 73 FR 44354, 44468–73 (July 30, 2008). With regard to aircraft, the Agency sought comment on the impact of aircraft operations on GHG emissions and the potential for reductions in GHG emissions from these operations.

On July 31, 2008, Earthjustice, on behalf of Petitioners, notified the EPA of its intent to file suit under CAA section 304(a) against the EPA for the Agency's alleged unreasonable delay in responding to its aircraft petition and in making an endangerment finding under section 231. On June 11, 2010, Petitioners filed a complaint against the EPA in the U.S. District Court for the District of Columbia claiming that, among other things, the EPA had unreasonably delayed because it had failed to answer the 2007 Petition and to determine whether GHG emissions from aircraft cause or contribute to air pollution which may reasonably be anticipated to endanger public health and/or welfare.

The District Court found that while CAA section 231 generally confers broad discretion to the EPA in determining what standards to promulgate, section 231(a)(2)(A) imposed a nondiscretionary duty on the EPA to make a finding with respect to endangerment from aircraft GHG emissions. *Center for Biological Diversity, et al.* v. *EPA,* 794 F. Supp. 2d 151 (D.D.C. 2011). This ruling was issued in response to the EPA's motion to dismiss the case on jurisdictional grounds and did not address the merits of the Plaintiffs' claims regarding the Agency's alleged unreasonable delay. Therefore, it did not include an order for the EPA to make such a finding by a certain date. In a subsequent ruling on the merits, the Court found that the Plaintiffs had not shown that the EPA had unreasonably delayed in making an endangerment determination regarding GHG emissions from aircraft. *Center for Biological Diversity, et al.* v. *EPA,* No. 1:10–985 (D.D.C. March, 20, 2012). Thus, the Court did not find the EPA to be liable based on the Plaintiffs' claims and did not place the Agency under a remedial order to make an endangerment finding or to issue standards. The Plaintiffs did not appeal this ruling to the U.S. Court of Appeals for the District of Columbia Circuit (also called the “D.C. Circuit” in this document).

The EPA issued a Response to the Aircraft Petition[31] on June 27, 2012, stating our intention to move forward with a proposed endangerment finding for aircraft GHG emissions under section 231, while explaining that it would take the Agency significant time to complete this action. The EPA explained that the Agency would not begin this effort until after the U.S. Court of Appeals completed its then-pending review of the previous section 202 Endangerment Finding, since the then-awaited ruling might provide important guidance for the EPA in conducting future GHG endangerment findings. The EPA further explained that after receiving the Court of Appeal's ruling, it would take at least 22 months from that point for the Agency to conduct an additional finding regarding aircraft GHG emissions.

Meanwhile, the Court of Appeals upheld the EPA's section 202 findings in a decision of a three-judge panel on June 26, 2012, and denied petitions for rehearing of that decision on December 20, 2012. *Coalition for Responsible Regulation, Inc.,* v. *EPA,* 684 F.3d 102 (D.C. Cir. 2012), reh'g denied 2012 U.S. App. LEXIS 26315, 25997 (D.C. Cir 2012).[32] Given these rulings, we are proceeding with these findings regarding aircraft engine GHG emissions as a further step toward responding to the 2007 Petition for Rulemaking.

D. U.S. Aircraft Regulations and the International Community

The EPA and the FAA traditionally work within the standard-setting process of ICAO's Committee on Aviation Environmental Protection (CAEP or the Committee) to establish international emission standards and related requirements, which individual nations later adopt into domestic law in fulfillment of their obligations under the Convention on International Civil Aviation (Chicago Convention). Historically, under this approach, international emission standards have first been adopted by ICAO, and subsequently the EPA has initiated rulemakings under CAA section 231 to establish domestic standards that are at least as stringent as ICAO's standards. This approach has been affirmed as a reasonable way to implement the Agency's duties under CAA section 231 by the U.S. Court of Appeals for the D.C. Circuit. *Nat'l Ass'n of Clean Air Agencies (NACAA)* v. *EPA,* 489 F.3d 1221, 1230–32 (D.C. Cir. 2007). After EPA promulgates aircraft engine emissions standards, CAA section 232 requires the FAA to issue regulations to ensure compliance with these standards when issuing certificates under its authority under Title 49 of the United

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Aerospace_Forecast.pdf (last accessed April 8, 2016).

[30] Center for Biological Diversity, Center for Food Safety, Friends of the Earth, International Center for Technology Assessment, and Oceana, 2007: *Petition for Rulemaking Under the Clean Air Act to Reduce the Emissions of Air Pollutants from Aircraft the Contribute to Global Climate Change,* December 5, 26 pp. Available at *http://www.epa.gov/otaq/aviation.htm* (last accessed April 8, 2016) and Docket EPA–HQ–OAR–2014–0828.

[31] U.S. EPA, 2012: *Memorandum in Response to Petition Regarding Greenhouse Gas Emissions from Aircraft,* June 14, 11 pp. Available at *http://www.epa.gov/otaq/aviation.htm* (last accessed April 8, 2016) and Docket EPA–HQ–OAR–2014–0828.

[32] Petitions for *certiorari* were filed in the Supreme Court, and the Supreme Court granted six of those petitions but “agreed to decide only one question: ‘Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases.’ ” *Utility Air Reg. Group* v. *EPA,* 134 S. Ct. 2427, 2438 (2014); *see also Virginia* v. *EPA,* 134 S. Ct. 418 (2013), *Pac. Legal Found.* v. *EPA,* 134 S. Ct. 418 (2013), and *CRR,* 134 S. Ct. 468 (2013) (all denying cert.). Thus, the Supreme Court did not disturb the D.C. Circuit's holding that affirmed the 2009 Endangerment Finding.

States Code. These final endangerment and cause or contribute findings for aircraft GHG emissions are in preparation for this domestic emissions standards rulemaking process.

1. International Regulations and U.S. Obligations

The EPA has worked with the FAA since 1973, and later with ICAO, to develop domestic and international standards and other recommended practices pertaining to aircraft engine emissions. ICAO is a United Nations (UN) specialized agency, established in 1944 by the Chicago Convention, "in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically."[33] ICAO sets international standards and regulations for aviation safety, security, efficiency, capacity, and environmental protection and serves as the forum for cooperation in all fields of international civil aviation. ICAO works with the Chicago Convention's member states and global aviation organizations to develop international Standards and Recommended Practices (SARPs), which member states reference when developing their legally enforceable national civil aviation regulations. The United States is currently one of 191 participating ICAO member states.[34] [35]

In the interest of global harmonization and international air commerce, the Chicago Convention urges its member states to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organization. The Chicago Convention also recognizes that member states may adopt standards that are more stringent than those agreed upon by ICAO. Any member state which finds it impracticable to comply in all respects with any international standard or procedure, or that deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, is required to give immediate notification to ICAO of the differences between its own practice and that established by the international standard.[36]

ICAO's work on the environment focuses primarily on those problems that benefit most from a common and coordinated approach on a worldwide basis, namely aircraft noise and engine emissions. SARPs for the certification of aircraft noise and aircraft engine emissions are covered by Annex 16 of the Chicago Convention. To continue to address aviation environmental issues, in 2004, ICAO established three environmental goals: (1) Limit or reduce the number of people affected by significant aircraft noise; (2) limit or reduce the impact of aviation emissions on local air quality; and (3) limit or reduce the impact of aviation GHG emissions on the global climate.

The Chicago Convention has a number of other features that govern international commerce. First, member states that wish to use aircraft in international transportation must adopt emissions standards and other recommended practices that are at least as stringent as ICAO's standards. Member states may ban the use of any aircraft within their airspace that does not meet ICAO standards.[37] Second, the Chicago Convention indicates that member states are required to recognize the airworthiness certificates of any state whose standards are at least as stringent as ICAO's standards.[38] Third, to ensure that international commerce is not unreasonably constrained, a member state which elects to adopt more stringent domestic emission standards is obligated to notify ICAO of the differences between its standards and ICAO standards.[39]

ICAO's CAEP, which consists of members and observers from states, intergovernmental and non-governmental organizations representing aviation industry and environmental interests, undertakes ICAO's technical work in the environmental field. The Committee is responsible for evaluating, researching, and recommending measures to the ICAO Council that address the environmental impacts of international civil aviation. CAEP's terms of reference indicate that "CAEP's assessments and proposals are pursued taking into account: Technical feasibility; environmental benefit; economic reasonableness; interdependencies of measures (for example, among others, measures taken to minimize noise and emissions); developments in other fields; and international and national programs."[40] The ICAO Council reviews and adopts the recommendations made by CAEP. It then reports to the ICAO Assembly, the highest body of the Organization, where the main policies on aviation environmental protection are adopted and translated into Assembly Resolutions. If ICAO adopts a CAEP proposal for a new environmental standard, it then becomes part of ICAO standards and recommended practices (Annex 16 to the Chicago Convention).[41] [42]

At CAEP meetings, the United States is represented by the FAA and plays an active role.[43] The EPA has historically been a principal participant in various ICAO/CAEP working groups and other international venues, assisting and advising FAA on aviation emissions, technology, and environmental policy matters. In turn, the FAA assists and advises the EPA on aviation environmental issues, technology and certification matters.

The first international standards and recommended practices for aircraft engine emissions were recommended by CAEP's predecessor, the Committee on Aircraft Engine Emissions (CAEE), and adopted by ICAO in 1981.[44] These standards limited aircraft engine emissions of hydrocarbons (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X). The 1981 standards applied to newly manufactured engines, which are those engines built after the effective date of the regulations—also referred to as in-production engines. In 1993, ICAO adopted a CAEP/2 proposal to tighten the original NO_X standard by 20 percent and amend the test procedures.[45] These 1993 standards applied both to newly certified turbofan engines, which are those engine models that received their initial type certificate after the effective date of the regulations—also referred to as newly certified engines or new engine designs—and to in-production engines, but with different effective dates for newly certified engines and in-production engines. In 1995, CAEP/3 recommended a further tightening of the NO_X standards by 16 percent and additional test procedure amendments, but in 1997 the ICAO Council rejected this stringency proposal and approved only the test procedure amendments. At the CAEP/4 meeting in 1998, the Committee adopted a similar 16 percent NO_X reduction proposal, which ICAO approved in 1998. The CAEP/4 standards applied only to new engine designs certified (or newly certified engines) after December 31, 2003 (*i.e.,* unlike the CAEP/2 standards, the CAEP/4 requirements did not apply to in-production engines). In 2004, CAEP/6 recommended a 12 percent NO_X reduction, which ICAO approved in 2005.[46][47] The CAEP/6 standards applied to new engine designs certified after December 31, 2007. In 2010, CAEP/8 recommended a further tightening of the NO_X standards by 15 percent for new engine designs certified after December 31, 2013.[48][49] The Committee also recommended that the CAEP/6 standards be applied to in-production engines (eliminating the production of CAEP/4 compliant engines with the exception of spare engines), and ICAO approved these recommendations in 2011.[50]

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[33] ICAO, 2006: *Convention on International Civil Aviation, Ninth Edition,* Document 7300/9, 114 pp. Available at: *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed April 20, 2016).

[34] Members of ICAO's Assembly are generally termed member states or contracting states. These terms are used interchangeably throughout this preamble.

[35] There are currently 191 contracting states according to ICAO's Web site: *www.icao.int* (last accessed April 8, 2016).

[36] ICAO, 2006: *Doc 7300-Convention on International Civil Aviation, Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed April 8, 2016).

[37] ICAO, 2006: *Convention on International Civil Aviation, Article 87, Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed April 8, 2016).

[38] ICAO, 2006: *Convention on International Civil Aviation, Article 33, Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed April 8, 2016).

[39] ICAO, 2006: *Convention on International Civil Aviation, Article 38, Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed April 8, 2016).

[40] ICAO: CAEP Terms of Reference. Available at *http://www.icao.int/environmental-protection/Pages/Caep.aspx#ToR* (last accessed April 27, 2016).

[41] ICAO, 2008: *Aircraft Engine Emissions,* International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Third Edition, July, 110 pp. Available at *http://www.icao.int/publications/catalogue/cat_2016_en.pdf* (last accessed April 8, 2016). The ICAO Annex 16 Volume II is found on page 19 of the ICAO Products & Services 2016 catalog and is copyright protected; Order No. AN16–2.

[42] CAEP develops new emission standards based on an assessment of the technical feasibility, cost, and environmental benefit of potential requirements.

[43] Pursuant to the President's memorandum of August 11, 1960 (and related Executive Order No. 10883 from 1960), the Interagency Group on International Aviation (IGIA) was established to facilitate coordinated recommendations to the Secretary of State on issues pertaining to international aviation. The DOT/FAA is the chair of IGIA, and as such, the FAA represents the U.S. on environmental matters at CAEP.

2. The International Civil Aviation Organization's Reasons for Addressing Aircraft GHG Emissions

In October 2010, the 37th Assembly (Resolution A37–19) of ICAO requested the development of an ICAO CO_2 emissions standard.[51] The Resolution provided a framework towards the achievement of an environmentally sustainable future for international aviation. With this Resolution, the ICAO Assembly agreed to a global aspirational goal for international aviation of improving annual fuel efficiency by two percent up to the year 2050, and stabilizing CO_2 emissions at 2020 levels.[52] Reducing climate impacts of international aviation is a critical element of ICAO's strategic objective of achieving environmental protection and sustainable development of air transport. ICAO is currently pursuing a comprehensive set of measures to reduce aviation's climate impact, including lower-carbon alternative fuels, CO_2 emissions technology-based standards, operational improvements, and market based measures. The development and adoption of a CO_2 emissions standard is an important part of ICAO's comprehensive set of measures.

3. EPA's Regulation of Aircraft Emissions and the Relationship of the Final Endangerment and Cause or Contribute Findings to International Aircraft Standards

As required by the CAA, the EPA has been engaged in reducing harmful air pollution from aircraft engines for over 40 years, regulating gaseous exhaust emissions, smoke, and fuel venting from aircraft engines.[53] We have periodically revised these regulations. In a 1997 rulemaking, for example, we made our emission standards and test procedures more consistent with those of ICAO's CAEP for turbofan engines used in commercial aviation with rated thrusts greater than 26.7 kilonewtons.[54] These ICAO requirements are generally referred to as CAEP/2 standards.[55] The 1997 rulemaking included new NO_X emission standards for newly manufactured commercial turbofan engines (as described earlier, those engines built after the effective date of the regulations that were already certified to pre-existing standards—also referred to as in-production engines)[56] and for newly certified commercial turbofan engines (as described earlier, those engine models that received their initial type certificate after the effective date of the regulations—also referred to as new engine designs).[57] It also included a CO emission standard for in-production commercial turbofan engines.[58] In 2005, we promulgated more stringent NO_X emission standards for newly certified commercial turbofan engines.[59] That final rule brought the U.S. standards closer to alignment with ICAO CAEP/4 requirements that became effective in 2004. In 2012, we issued more stringent two-tiered NO_X emission standards for newly certified and in-production commercial and non-commercial turbofan aircraft engines, and these NO_X standards align with ICAO's CAEP/6 and CAEP/8 requirements that became effective in 2013 and 2014, respectively.[60][61] The EPA's actions to regulate certain pollutants emitted from aircraft engines come directly from the authority in section 231 of the CAA, and we have aligned the U.S. emissions requirements with those promulgated by ICAO. All of these previous emission standards have generally been considered anti-backsliding standards (most aircraft engines meet the standards), which are technology-following.

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[44] ICAO, 2008: *Aircraft Engine Emissions: Foreword,* International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Third Edition, July, 110 pp. Available at *http://www.icao.int/publications/catalogue/cat_2016_en.pdf* (last accessed April 8, 2016). The ICAO Annex 16 Volume II is found on page 19 of the ICAO Products & Services 2016 catalog and is copyright protected; Order No. AN16–2.

[45] CAEP conducts its work over a period of years. Each work cycle is numbered sequentially and that identifier is used to differentiate the results from one CAEP to another by convention. The first technical meeting on aircraft emission standards was CAEP's successor, *i.e.,* CAEE. The first meeting of CAEP, therefore, is referred to as CAEP/2.

[46] CAEP/5 did not address new aircraft engine emission standards.

[47] ICAO, 2008: *Aircraft Engine Emissions,* Annex 16, Volume II, Third Edition, July 2008, Amendment 5 effective on July 11, 2005, 110 pp. Available at *http://www.icao.int/publications/catalogue/cat_2016_en.pdf* (last accessed April 8, 2016). The ICAO Annex 16 Volume II is found on page 19 of the ICAO Products & Services 2016 catalog and is copyright protected; Order No. AN16–2.

[48] CAEP/7 did not address new aircraft engine emission standards.

[49] ICAO, 2010: *Committee on Aviation Environmental Protection (CAEP), Report of the Eighth Meeting, Montreal, February 1–12, 2010,* CAEP/8–WP/80 Available in Docket EPA–HQ–OAR–2010–0687.

[50] ICAO, 2014: *Aircraft Engine Emissions,* Annex 16, Volume II, Third Edition, July 2008, Amendment 8, 108 pp. CAEP/8 corresponds to Amendment 7 effective on July 18, 2011. Available at *http://www.icao.int/publications/catalogue/cat_2016_en.pdf* (last accessed April 8, 2016). The ICAO Annex 16 Volume II is found on page 19 of the ICAO Products & Services 2016 catalog and is copyright protected; Order No. AN16–2/E/11.

[51] A consolidated statement of continuing policies and practices related to environmental protection (known as Assembly Resolutions) is revised and updated by the Council every three years for adoption by the ICAO Assembly. ICAO, 2010: *Resolutions Adopted by the Assembly, 37th Session, Montreal, September 29–October 8, 2010,* Provisional Edition, November 2010.

[52] The global aspirational goal for international aviation of improving annual fuel efficiency by 2 percent is for the annual international civil aviation in-service fleet. Fuel efficiency is measured on the basis of the volume of fuel used per revenue tonne kilometer performed. ICAO CAEP, 2009: *Aspirational Goals and Implementation Options,* Working Paper HLM–ENV/09–WP/5, 5 pp. Available at *http://www.icao.int/Meetings/AMC/MA/High%20Level%202009/hlmenv_wp005_en.pdf* (last accessed April 8, 2015).

[53] U.S. EPA, 1973: *Emission Standards and Test Procedures for Aircraft; Final Rule,* 38 FR 19088 (July 17, 1973).

[54] U.S. EPA, 1997: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test rocedures; Final Rule,* 62 FR 25355 (May 8, 1997).

[55] The full CAEP membership meets every three years and each session is denoted by a numerical identifier. For example, the second meeting of CAEP is referred to as CAEP/2, and CAEP/2 occurred in 1994.

[56] This does not mean that in 1997 we promulgated requirements for the re-certification or retrofit of existing in-use engines.

[57] In the existing EPA regulations, 40 CFR part 87, newly certified aircraft engines are described as engines of a type or model of which the date of manufacture of the first individual production model was after the implementation date. Newly manufactured aircraft engines are characterized as engines of a type or model for which the date of manufacturer of the individual engine was after the implementation date.

[58] U.S. EPA, 1997: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule,* 62 FR 25355 (May 8, 1997).

In addressing CO_2 emissions, ICAO has moved to regulating a whole aircraft. ICAO explained its decision to regulate pollutant emissions from the whole aircraft in a 2013 ICAO circular.[62] Several factors are considered when addressing whole-aircraft CO_2 emissions, as CO_2 emissions are influenced by aerodynamics, weight, and engine technology. Since the aircraft-specific characteristics of aerodynamics and weight affect fuel consumption, they ultimately affect CO_2 engine exhaust emissions. Rather than viewing CO_2 as a measurable emission from the engine alone, ICAO addresses CO_2 emissions as an aircraft-specific characteristic based on fuel consumption.

The EPA has worked diligently over the past six years within the ICAO/CAEP process on a range of technical issues regarding aircraft CO_2 emission standards. The 2015 ANPR discussed the issues arising from those international proceedings and requested public comment on a variety of issues to assist the Agency in developing its position with regard to these issues, to help ensure transparency and obtain views on aircraft engine GHG emission standards that it might potentially adopt under the CAA.

As described in the 2015 ANPR, in 2013 CAEP agreed on a metric[63] to compare CO_2 emissions from aircraft. The CO_2 metric value is a comparative metric meant to differentiate between generations of aircraft and to equitably capture improvements in aerospace technology that contribute to a reduction in the airplane CO_2 emissions. The CO_2 metric is not intended for use as a direct measure of CO_2 emissions rates or operational fuel burn, rather it is a comparative measure of technology on different aircraft.

Using this metric, CAEP considered and analyzed 10 different stringency levels for both in-production and new type standards, comparing aircraft with a similar level of technology on the same stringency level. These levels were generically referred to numerically from "1" as the least stringent to "10" as the most stringent, which correspond to the upper and lower lines of constant technology, respectively, from the 2015 ANPR. The 2015 ANPR described the range of stringency levels under consideration at CAEP as falling into three categories as follows: (1) CO_2 stringency levels that could impact[64] only the oldest, least efficient aircraft in-production around the world, (2) middle range CO_2 stringency levels that could impact many aircraft currently in-production and comprising much of the current operational fleet, and (3) CO_2 stringency levels that could impact aircraft that have either just entered production or are in final design phase but will be in-production by the time the international CO_2 standards becomes effective.[65]

At its meeting in February of 2016, CAEP agreed on an initial set of international standards to regulate CO_2 emissions from aircraft.[66] It was agreed that these international standards should apply to both new type and in-production aircraft. The applicability date for the in-production standard was agreed to be later than for the new type standard. CAEP explained that this will allow manufacturers and certification authorities additional preparation time to accommodate the standards. The new type and in-production stringency levels for smaller and larger aircraft were agreed to be set at different levels to reflect the range of technology being used and the availability of new fuel burn reduction technologies that vary across aircraft of differing size and weight. Table II.1 provides a brief overview of the applicability dates and stringency levels of the standards agreed to at ICAO/CAEP. As described earlier, CAEP considered and analyzed 10 different stringency levels for both in-production and new type standards (from 1 as the least stringent to 10 as the most stringent).

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[59] U.S. EPA, 2005: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule,* 70 FR 69664 (November 17, 2005).

[60] U.S. EPA, 2012: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule,* 77 FR 36342 (June 18, 2012).

[61] While ICAO's standards were not limited to "commercial" aircraft engines, our 1997 standards were explicitly limited to commercial engines, as our finding that NO_X and carbon monoxide emissions from aircraft engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare was so limited. See 62 FR 25358 (May 8, 1997). In the 2012 rulemaking, we expanded the scope of that finding and of our standards pursuant to CAA section 231(a)(2)(A) to include such emissions from both commercial and non-commercial aircraft engines based on the physical and operational similarities between commercial and noncommercial civilian aircraft and to bring our standards into full alignment with ICAO's.

[62] ICAO, 2013: *CAEP/9 Agreed Certification Requirement for the Aeroplane CO_2 Emissions Standard,* Circular (Cir) 337, 40 pp, AN/192. Available at *http://www.icao.int/publications/catalogue/cat_2016_en.pdf* (last accessed April 8, 2016). The ICAO Circular 337 is found on page 87 of the ICAO Products & Services 2016 catalog and is copyright protected; Order No. CIR337.

[63] The CO_2 metric is the average of three cruise test points normalized by a dimensionless parameter representing aircraft fuselage size. The units of the metric value are kilograms of fuel burned per kilometer flown. However, because the metric is a normalized value it cannot be used to estimate operational fuel burn or emission rates of aircraft. The metric value is described in detail in both ICAO Circular 337 and in section D of the 2015 ANPR. ICAO, 2013: *CAEP/9 Agreed Certification Requirement for the Aeroplane CO_2 Emissions Standard,* Circular (Cir) 337, 40 pp., AN/192, Available at *http://www.icao.int/publications/catalogue/cat_2016_en.pdf* (last accessed April 27, 2016). The ICAO Circular 337 is found on page 87 of the catalog and is copyright protected; Order No. CIR337.

[64] As described in the 2015 ANPR, the aircraft shown in [Figure II.1 and II.2] are in-production and current in-development. These aircraft could be impacted by an in-production standard in that, if they were above the standard, they would need to either implement a technology response or go out of production. For a new type only standard there will be no regulatory requirement for these aircraft to respond.

[65] 80 FR at 37797.

[66] Further, the EPA anticipates that the 39th ICAO Assembly will approve these CO_2 emissions standards in October 2016, and that subsequently, ICAO will formally adopt these CO_2 emissions standards in March 2017.

TABLE II.1—STRINGENCY LEVELS AND APPLICABILITY DATES FOR ICAO/CAEP CO_2 EMISSION STANDARDS

	Aircraft MTOM thresholds (kg)	New type aircraft[67] maximum permitted CO_2 metric value	In-production aircraft maximum permitted CO_2 metric value
Stringency Level	>5,700 to <60,000	[A] 5	[B] 3
	Horizontal Transition[68] 60,000 to ~70,000	[C]	[D]
	> ~70,000	[E] 8.5	[F] 7
Applicability Date	Application for a new type certificate or a change to an existing type certificate.	2020 (2023 for planes with less than 19 seats)	2023
	Production Cut Off	n/a	2028

[A] Equation of ICAO Stringency Option #5: $MV = 10^{-2.73780 + (0.681310 * \log 10(MTOM)) + (-0.0277861 * (\log 10(MTOM))^2)}$

[B] Equation of ICAO Stringency Option #3: $MV = 10^{-2.57535 + (0.609766 * \log 10(MTOM)) + (-0.0191302 * (\log 10(MTOM))^2)}$

[C] Equation of New Type transition—60,000 to 70,395 kg: $MV = 0.764$

[D] Equation of In-production transition—60,000 to 70,107 kg: $MV = 0.797$

[E] Equation of ICAO Stringency Option #8.5: $MV = 10^{-2.57535 + (0.609766 * \log 10(MTOM)) + (-0.0191302 * (\log 10(MTOM))^2)}$

[F] Equation of ICAO Stringency Option #7: $MV = 10^{-1.39353 + (-0.020517 * \log 10(MTOM)) + (0.0593831 * (\log 10(MTOM))^2)}$

Figures II.1 and II.2 show a graphical depiction of both the new type and in-production standards compared against the lines of constant technology described in the 2015 ANPR and CO_2 metric value levels of current (as of February 2016) in-production and in-development[69] aircraft. The aircraft data shown were generated by the EPA using a commercially available aircraft modeling tool called PIANO.[70] It should be noted that a number of the aircraft currently shown as in-production are expected to go out of production and be replaced by known in-development aircraft prior to both the new type and the in-production CO_2 standards going into effect internationally.

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[67] "In Development" aircraft shown in Figures II.1 and II.2 are the aircraft that were in development by manufacturers at the time the 2015 ANPR was published.

[68] Stringency lines above and below 60,000 kilograms (MTOM) are connected by a horizontal transition starting at 60,000 kilograms (MTOM) and continuing right (increasing mass) until it intersects with the next level.

[69] Aircraft that are currently in-development but will be in production by the applicability dates. These could be new types or significant partial redesigned aircraft.

[70] PIANO (Project Interactive Analysis and Optimization), Aircraft Design and Analysis Software by Dr. Dimitri Simos, Lissys Limited, UK, 1990–present; Available at *www.piano.aero* (last accessed April 8, 2016). This is a commercially available aircraft design and performance software suite used across the industry and academia. This model contains non-manufacturer provided estimates of performance of various aircraft.

FIGURE II.1

ICAO CO_2 EMISSION STANDARDS (MTOM IN KILOGRAMS)

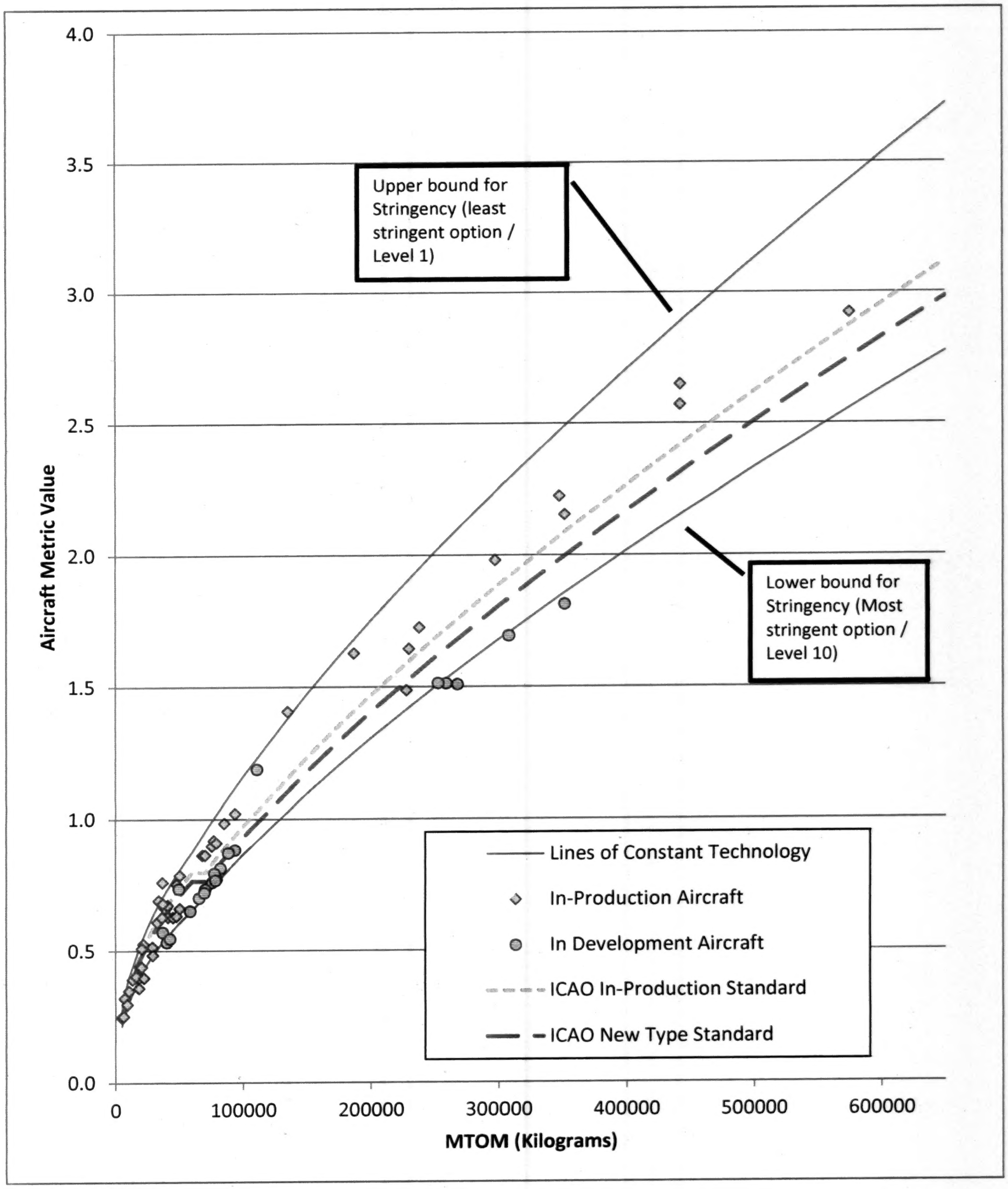
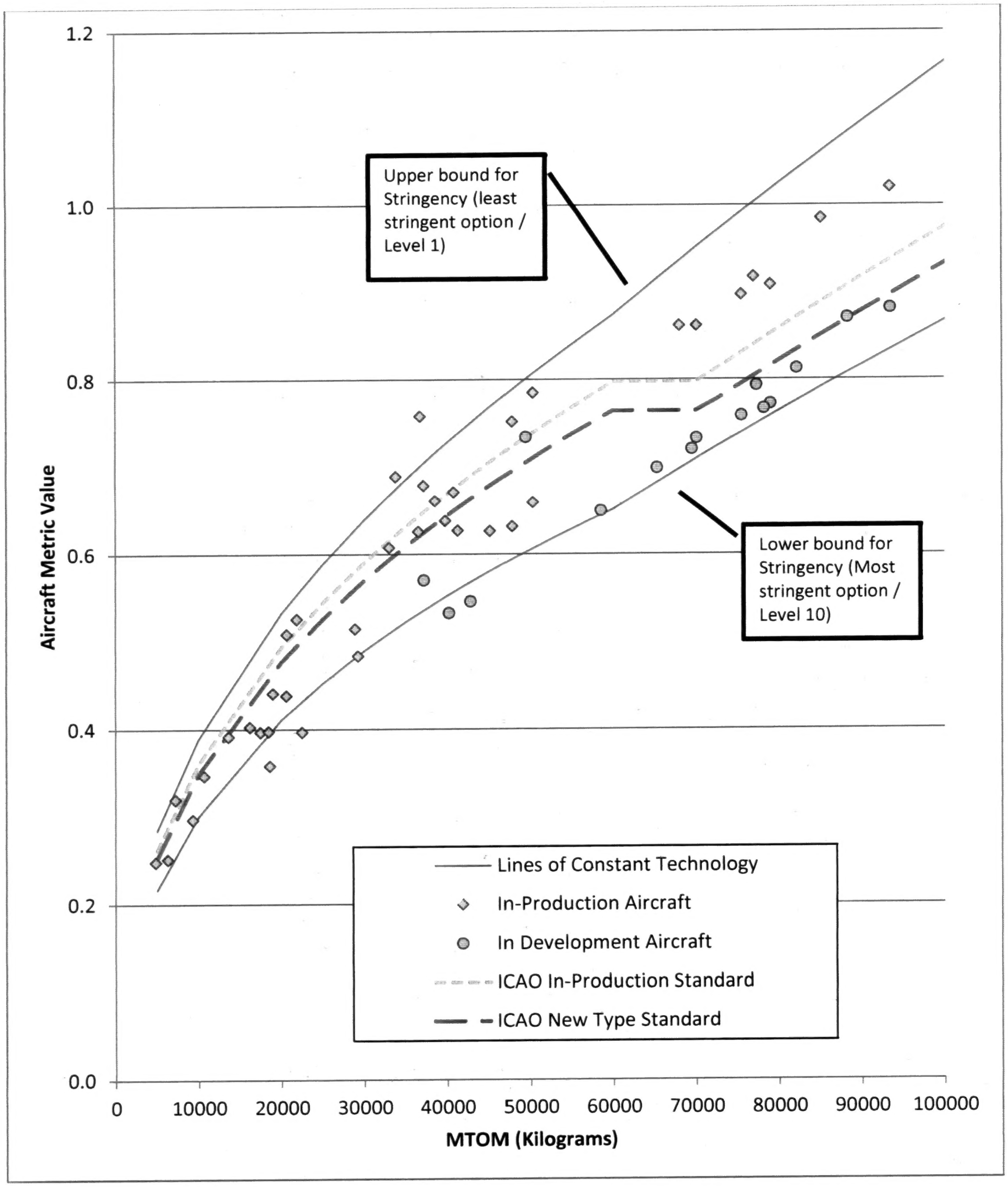


FIGURE II.2

ICAO CO_2 EMISSION STANDARDS (Zoomed to show <100,000 MTOM IN KILOGRAMS)



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In this final action, the EPA is promulgating findings under section 231(a)(2) that emissions of the six well-mixed GHGs from certain classes of engines used in covered aircraft cause or contribute to endangering air pollution. The EPA is not yet issuing proposed or final emission standards, nor is the EPA taking final action that prejudges what future standards will be. Instead, the EPA's final endangerment and cause or contribute findings for aircraft GHG emissions are in preparation for a subsequent, expected domestic rulemaking process to adopt future GHG emissions standards. If the ICAO Assembly, in October 2016, approves the final CO_2 standards and subsequently ICAO formally adopts the final CO_2 standards in March 2017, the EPA's standards will need to be at least as stringent as the ICAO CO_2 aircraft standards for the United States to meet its treaty obligations under the Chicago Convention. As a result of these positive findings, the EPA is obligated under section 231 of the CAA to set emission standards applicable to GHG emissions from the classes of aircraft engines included in the contribution finding, no matter the outcome of ICAO's future actions in October 2016 and March 2017.

III. Legal Framework for This Action

The EPA has previously made an endangerment finding for GHGs under Title II of the CAA, in the 2009 Endangerment Finding for section 202(a) source categories. In the 2009 Endangerment Finding, the EPA explained its legal framework for making an endangerment finding under section 202(a) of the CAA (74 FR 18886, 18890–94 (April 24, 2009), and 74 FR 66496, 66505–10 (December 15, 2009)). The text in section 202(a) that was the basis for the 2009 Endangerment Finding addresses "the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [the Administrator's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." Similarly, section 231(a)(2)(A) concerns "the emission of any air pollutant from any class or classes of aircraft engines which in [the Administrator's] judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare." Thus, the text of the CAA section concerning aircraft emissions in section 231(a)(2)(A) mirrors the text of CAA section 202(a) that was the basis for the 2009 Endangerment Finding.

The EPA's approach in the 2009 Endangerment Finding (described below in sections III.A and III.B) was affirmed by the U.S. Court of Appeals for the D.C. Circuit in *Coalition for Responsible Regulation, Inc.* v. *EPA,* 684 F.3d 102 (D.C. Cir. 2012), *reh'g denied* 2012 U.S. App. LEXIS 26313, 26315, 25997 (D.C. Cir. 2012) (*CRR*). In particular, the D.C. Circuit ruled that the 2009 Endangerment Finding (including the Agency's denial of petitions for reconsideration of that Finding) was not arbitrary or capricious, was consistent with the U.S. Supreme Court's decision in *Massachusetts* v. *EPA* and the text and structure of the CAA, and was adequately supported by the administrative record. *CRR,* 684 F.3d at 116–128. The D.C. Circuit found that the EPA had based its decision on "substantial scientific evidence" and noted that the EPA's reliance on major scientific assessments was consistent with the methods that decision-makers often use to make a science-based judgment. *Id.* at 120–121. Petitions for *certiorari* were filed in the Supreme Court, and the Supreme Court granted six of those petitions but "agreed to decide only one question: 'Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases.' " *Utility Air Reg. Group* v. *EPA,* 134 S. Ct. 2427, 2438 (2014); see also *Virginia* v. *EPA,* 134 S. Ct. 418 (2013), *Pac. Legal Found.* v. *EPA,* 134 S. Ct. 418 (2013), and *CRR,* 134 S. Ct. 468 (2013) (all denying cert.). Thus, the Supreme Court did not disturb the D.C. Circuit's holding that affirmed the 2009 Endangerment Finding. Accordingly, the Agency finds that it is reasonable to use that same approach under section 231(a)(2)(A)'s similar endangerment text, and as explained in the following discussion, is acting consistently with that judicially sanctioned framework for purposes of this final section 231 finding.

Two provisions of the CAA govern this final action. Section 231(a)(2)(A) sets forth a two-part predicate for regulatory action under that provision: Endangerment and cause or contribute. Section 302 of the Act contains definitions of the terms "air pollutant" and "welfare" used in section 231(a)(2)(A). These statutory provisions are discussed below.

A. Section 231(a)(2)(A)—Endangerment and Cause or Contribute

As noted above, section 231(a)(2)(A) of the CAA (like section 202(a)) calls for the Administrator to exercise her judgment and make two separate determinations: first, whether the relevant kind of air pollution—here, the six well-mixed GHGs—may reasonably be anticipated to endanger public health or welfare, and second, whether emissions of any air pollutant from classes of the sources in question (aircraft engines under section 231 and new motor vehicles or engines under section 202) cause or contribute to this air pollution.[71]

The Administrator interprets the two-part test required under section 231(a)(2)(A) as being the same as that explained in the 2009 Endangerment Finding. *See* 74 FR 66505–06. As in the section 202(a) context, this analysis entails a scientific judgment by the Administrator about the potential risks posed by GHG emissions to public health and welfare. *See CRR,* 684 F.3d at 117–118.[72]

In making this scientific judgment, the Administrator is guided by five principles. First, the Administrator is required to protect public health and welfare. She is not asked to wait until harm has occurred but instead must be ready to take regulatory action to prevent harm before it occurs.[73] The Administrator is thus to consider both current and future risks.

Second, the Administrator is to exercise judgment by weighing risks, assessing potential harms, and making reasonable projections of future trends and possibilities. It follows that when exercising her judgment the Administrator balances the likelihood and severity of effects. This balance involves a sliding scale: on one end the severity of the effects may be significant, but the likelihood low, while on the other end the severity may be less significant, but the likelihood high.[74] At different points along this scale, the Administrator is permitted to find endangerment. Accordingly, the Administrator need not set a precise or minimum threshold of risk or harm as part of making an endangerment finding, but rather may base her determination on " 'a lesser risk of greater harm . . . or a greater risk of lesser harm' or any combination in between." *CRR,* 684 F.3d at 123 (quoting *Ethyl Corp.* v. *EPA,* 541 F.2d, 1, 18 (D.C. Cir. 1976)).

Third, because scientific knowledge is constantly evolving, the Administrator may be called upon to make decisions while recognizing the uncertainties and limitations of the data or information available, as risks to public health or welfare may involve the frontiers of scientific or medical knowledge.[75] At the same time, the Administrator must exercise reasoned decision making, and avoid speculative inquiries.

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[71] *See CRR,* 684 F.3d at 117 (explaining two-part analysis under section 202(a)).

[72] When agencies such as the EPA make determinations based on review of scientific data within their technical expertise, those decisions are given an "extreme degree of deference" by the courts. As the D.C. Circuit noted in reviewing the 2009 Endangerment Finding, "although we perform a searching and careful inquiry into the facts underlying the agency's decisions, we will presume the validity of the agency action as long as a rational basis for it is presented." *CRR,* 684 F.3d at 120 (internal citations and marks omitted).

[73] *See id.* at 121–122.

[74] *See id.* at 122–123 (noting that the § 202(a)(1) inquiry "necessarily entails a case-by-case, sliding scale approach" because endangerment is " 'composed of reciprocal elements of risk and harm, or probability and severity' " (quoting *Ethyl Corp.* v. *EPA,* 541 F.2d, 1, 18 (D.C. Cir. 1976)).

Fourth, the Administrator is to consider the cumulative impact of sources of a pollutant in assessing the risks from air pollution, and is not to look only at the risks attributable to a single source or class of sources. We additionally note that in making an endangerment finding, the Administrator is not limited to considering only those impacts that can be traced to the amount of air pollution directly attributable to the subject source classes. Such an approach would collapse the two prongs of the test by requiring that any climate change impacts upon which an endangerment determination is made result solely from the GHG emissions of aircraft. *See* 74 FR at 66542 (explaining the same point in the context of analogous language in section 202(a)). Similarly, the Administrator is not, in making the endangerment and cause or contribute findings, to consider the effect of emissions reductions from the resulting standards.[76] The threshold endangerment and cause or contribute criteria are separate and distinct from the standard setting criteria that apply if the threshold findings are met, and they serve a different purpose. Indeed, the more serious the endangerment to public health and welfare, the more important it may be that action be taken to address the actual or potential harm even if no one action alone can solve the problem, and a series of actions is called for.

Fifth, the Administrator is to consider the risks to all parts of our population, including those who are at greater risk for reasons such as increased susceptibility to adverse health and welfare effects. If vulnerable subpopulations are especially at risk, the Administrator is entitled to take that point into account in deciding the question of endangerment. Here too, both likelihood and severity of adverse effects are relevant. As explained previously in the 2009 Endangerment Finding and as reiterated below for this section 231 finding, vulnerable subpopulations face serious health and welfare risks as a result of climate change.

As the Supreme Court recognized in *Massachusetts* v. *EPA,* 549 U.S. at 534, the EPA may make an endangerment finding despite the existence of "some residual uncertainty" in the scientific record. *See also CRR,* 684 F. 2d at 122. Thus, this framework recognizes that regulatory agencies such as the EPA must be able to deal with the reality that "[m]an's ability to alter his environment has developed far more rapidly than his ability to foresee with certainty the effects of his alterations." *Ethyl Corp* v. *EPA,* 541 F.2d 1, 6 (D.C. Cir.), cert. denied 426 U.S. 941 (1976). Both "the Clean Air Act 'and common sense . . . demand regulatory action to prevent harm, even if the regulator is less than certain that harm is otherwise inevitable.' " *Massachusetts* v. *EPA,* 549 U.S. at 506, n.7 (citing *Ethyl Corp.*); *see also CRR,* 684 F.3d at 121–122.

In the 2009 Endangerment Finding, the Administrator recognized that the scientific context for an action addressing climate change was unique at that time because there was a very large and comprehensive base of scientific information that had been developed over many years through a global consensus process involving numerous scientists from many countries and representing many disciplines. 74 FR at 66506. That informational base has since grown. The Administrator also previously recognized that there are varying degrees of uncertainty across many of these scientific issues, which remains true. It is in this context that she is exercising her judgment and applying the statutory framework in this final section 231 finding. Further discussion of the language in section 231(a)(2)(A), and parallel language in 202(a), is provided below to explain more fully the basis for this interpretation, which the D.C. Circuit upheld in the 202(a) context.

1. The Statutory Language

The interpretation described above flows from the statutory language itself. The phrase "may reasonably be anticipated" and the term "endanger" in section 231(a)(2)(A) (as in section 202(a)) authorize, if not require, the Administrator to act to prevent harm and to act in conditions of uncertainty. They do not limit her to merely reacting to harm or to acting only when certainty has been achieved; indeed, the references to anticipation and to endangerment imply that to fail to look to the future or to less than certain risks would be to abjure the Administrator's statutory responsibilities. As the D.C. Circuit explained, the language "may reasonably be anticipated to endanger public health or welfare" in CAA section 202(a) requires a "precautionary, forward-looking scientific judgment about the risks of a particular air pollutant, consistent with the CAA's precautionary and preventive orientation." *CRR,* 684 F.3d at 122 (internal citations omitted). The court determined that "[r]equiring that EPA find 'certain' endangerment of public health or welfare before regulating GHGs would effectively prevent EPA from doing the job that Congress gave it in [section] 202(a)—utilizing emission standards to prevent reasonably anticipated endangerment from maturing into concrete harm." *Id.* The same language appears in section 231(a)(2)(A), and the same interpretation applies in that context.

Moreover, by instructing the Administrator to consider whether emissions of an air pollutant cause or contribute to air pollution in the second part of the two-part test, the Act makes clear that she need not find that emissions from any one sector or class of sources are the sole or even the major part of an air pollution problem. The use of the term "contribute" clearly indicates that such emissions need not be the sole or major cause of the pollution. In addition, the absence of the term "significantly" or any other word that modifies "contribute" shows that the EPA need not find that contributing emissions cross a minimum percentage- or mass-based threshold to be cognizable. The phrase "in [her] judgment" authorizes the Administrator to weigh risks and to consider projections of future possibilities, while also recognizing uncertainties and extrapolating from existing data. Finally, when exercising her judgment in making both the endangerment and cause or contribute findings, the Administrator balances the likelihood and severity of effects. Notably, the phrase "in [her] judgment" modifies both "may reasonably be anticipated" and "cause or contribute."

2. How the Origin of the Current Statutory Language Informs the EPA's Interpretation of Section 231(a)(2)(A)

In the proposed and final 2009 Endangerment Finding, the EPA explained that when Congress revised the section 202(a) language that governed that finding, along with other provisions, as part of the 1977 amendments to the CAA, it was responding to decisions issued by the D.C. Circuit in *Ethyl Corp.* v. *EPA* regarding the pre-1977 version of section 211(c) of the Act. 74 FR at

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[75] See *id.* at 121–122.

[76] As the D.C. Circuit explained in reviewing the 2009 Endangerment Finding under analogous language in section 202(a): "At bottom, § 202(a)(1) requires EPA to answer only two questions: whether particular 'air pollution'—here, greenhouse gases—'may reasonably be anticipated to endanger public health or welfare,' and whether motor-vehicle emissions 'cause, or contribute to' that endangerment." *CRR,* 648 F.3d at 117.

18891; *see also* 74 FR at 66506. The legislative history of those amendments, particularly the report by the House Committee on Interstate and Foreign Commerce, demonstrates that the EPA's interpretation of the section 231(a)(2)(A) language as set forth here in support of the Agency's section 231 finding is fully consistent with Congress' intention in crafting these provisions. See H.R. Rep. 95–294 (1977), as reprinted in 4 A Legislative History of the Clean Air Act Amendments of 1977 (1978) at 2465 (hereinafter LH). The committee explained that its action addressed not only section 211(c)(1)(A) but rather the entirety of the proposed legislative amendments, and stated that the committee's bill would thus apply the interpretation of section 211(c)(1)(A) in the *en banc* decision in *Ethyl Corp.* to all other sections of the Act relating to public health protection. 4 LH at 2516. It also noted that it had used the same basic formulation in section 202 and section 231, as well as in other sections. *Id.* at 2517. As both CAA sections 231 and 202 were included in the 1977 amendments, the Agency's discussion for the 2009 Endangerment Finding regarding the history of section 202 and how it supports the EPA's approach is also relevant for section 231. EPA's interpretation of section 231 is the same as its interpretation of the parallel language in section 202(a), which is explained in the 2009 Endangerment Finding. *See* 74 FR at 18891; *see also* 74 FR at 66506.

The legislative history clearly indicates that the House Committee believed the *Ethyl Corp.* decisions posed several ''crucial policy questions'' regarding the protection of public health and welfare. H.R. Rep. 95–294 at 48, 4 LH at 2515.[77] The following paragraphs summarize the *en banc* decision in *Ethyl Corp.* v. *EPA* and describe how the House Committee revised the endangerment language in the 1977 amendments to the CAA to serve several purposes consistent with that decision. In particular, the language: (1) Emphasizes the preventive or precautionary nature of the CAA;[78] (2) authorizes the Administrator to reasonably project into the future and weigh risks; (3) assures the consideration of the cumulative impact of all sources; (4) instructs that the health of susceptible individuals, as well as healthy adults, should be part of the analysis; and (5) indicates an awareness of the uncertainties and limitations in information available to the Administrator. H.R. rep. 95–294 at 49–50, 4 LH 2516–17.[79]

In revising the statutory language, Congress relied heavily on the *en banc* decision in *Ethyl Corp.* v. *EPA,* which reversed a three-judge panel opinion regarding an EPA rule restricting the content of lead in leaded gasoline.[80] After reviewing the relevant facts and law, the full court evaluated the statutory language at issue to see what level of ''certainty [was] required by the Clean Air Act before EPA may act.'' 541 F.2d at 7.

The petitioners argued that the statutory language ''will endanger'' required proof of actual harm, and that the actual harm had to come from emissions from the fuels in and of themselves. *Id.* at 12, 29. The *en banc* court rejected this approach, finding that the term ''endanger'' allowed the Administrator to act when harm is threatened, and did not require proof of actual harm. *Id.* at 13. ''A statute allowing for regulation in the face of danger is, necessarily, a precautionary statute.'' *Id.* Optimally, the court found, regulatory action would not only precede, but prevent, a perceived threat. *Id.*

The court also rejected petitioners' argument that any threatened harm must be ''probable'' before regulation was authorized. Specifically, the court recognized that danger ''is set not by a fixed probability of harm, but rather is composed of reciprocal elements of risk and harm, or probability and severity.'' *Id.* at 18. Next, the court held that the EPA's evaluation of risk is necessarily an exercise of judgment, and that the statute did not require a factual finding. *Id.* at 24. Thus, ultimately, the Administrator must ''act, in part on 'factual issues,' but largely 'on choices of policy, on an assessment of risks, [and] on predictions dealing with matters on the frontiers of scientific knowledge . . .'' *Id.* at 29 (citations omitted). Finally, the *en banc* court agreed with the EPA that even without the language in section 202(a) (which is also in section 231(a)(2)(A)) regarding ''cause or contribute to,'' it was appropriate for the EPA to consider the cumulative impact of lead from numerous sources, not just the fuels being regulated under section 211(c). *Id.* at 29–31.

The dissent in the original *Ethyl Corp.* decision and the *en banc* opinion were of ''critical importance'' to the House Committee which proposed the revisions to the endangerment language in the 1977 amendments to the CAA. H.R. Rep. 95–294 at 48, 4 LH at 2515. The Committee addressed those questions with the language that now appears in section 231(a)(2)(A) and several other CAA provisions—''emission of any air pollutant . . . which in [the Administrator's] judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.''

As noted above in section III.A.1, the phrase ''in [her] judgment'' calls for the Administrator to make a comparative assessment of risks and projections of future possibilities, consider uncertainties, and extrapolate from limited data. Thus, the Administrator must balance the likelihood of effects with the severity of the effects in reaching her judgment. The Committee emphasized that the Administrator's exercise of ''judgment''[81] may include making projections, assessments and estimates that are reasonable, as opposed to a speculative or '' 'crystal ball' inquiry.'' Moreover, procedural safeguards apply to the exercise of judgment, and final decisions are subject to judicial review. Also, the phrase ''in [her] judgment'' modifies both the phrases ''cause and contribute'' and ''may reasonably be anticipated,'' as discussed above. H.R. Rep. 95–294 at 50–51, 4 LH at 2517–18.

As the Committee further explained, the phrase ''may reasonably be anticipated'' points the Administrator in the direction of assessing current and future risks rather than waiting for proof of actual harm. This phrase is also intended to instruct the Administrator to consider the limitations and difficulties inherent in information on public health and welfare. H.R. Rep. 95–294 at 51, 4 LH at 2518.[82]

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[77] The Supreme Court recognized that the current language in section 202(a)(1), which uses the same formulation as that in section 231(a)(2)(A), is ''more protective'' than the 1970 version that was similar to the section 211 language before the D.C. Circuit in *Ethyl Corp. Massachusetts* v. *EPA,* 549 U.S. at 506, fn 7.

[78] *See* H.R. Rep. 95–294 at 49, 4 LH at 2516 (''To emphasize the preventive or precautionary nature of the Act, *i.e.* to assure that regulatory action can effectively prevent harm before it occurs'').

[79] Congress also standardized this language across the various sections of the CAA which address emissions from both stationary and mobile sources. H.R. Rep. 95–294 at 50, 4 LH at 2517; section 401 of the CAA Amendments of 1977.

[80] At the time of the 1973 rules requiring the reduction of lead in leaded gasoline, section 211(c)(1)(A) of the CAA stated that the Administrator may promulgate regulations that: ''control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle or motor vehicle engine (A) if any emissions product of such fuel or fuel additive will endanger the public health or welfare . . .'' CAA section 211(c)(1)(A) (1970).

[81] Throughout this document under CAA section 231, as throughout the previous notices concerning the 2009 Endangerment Finding under section 202, the judgments on endangerment and cause or contribute are described as a finding or findings. This is for ease of reference only, and is not intended to imply that the Administrator's judgment is solely a fact finding exercise; rather, the Administrator's exercise of judgment is to consider and weigh multiple factors when applying the scientific information to the statutory criteria.

Finally, the phrase "cause or contribute" ensures that all sources of the contaminant which contribute to air pollution are considered in the endangerment analysis (*e.g.*, not a single source or category of sources). It is also intended to require the Administrator to consider all sources of exposure to a pollutant (for example, food, water, and air) when determining risk. *Id.*

3. Additional Considerations for the Cause or Contribute Analysis

By instructing the Administrator to consider whether emissions of an air pollutant cause or contribute to air pollution, the statute is clear that she need not find that emissions from any one sector or class of sources are the sole or even the major part of an air pollution problem. The use of the term "contribute" clearly indicates a lower threshold than the sole or major cause.

Moreover, like the section 202(a) language that governed the 2009 Endangerment Finding, the statutory language in section 231(a)(2)(A) does not contain a modifier on its use of the term "contribute." This contrasts with other CAA provisions that expressly require "significant" contribution. *Compare, e.g.,* CAA sections 110(a)(2)(D)(i)(I); 111(b); 213(a)(2), (4). In the absence of specific language regarding the degree of contribution, the Administrator is to exercise her judgment in determining contribution. Congress clearly authorized regulatory controls to address air pollution even if the air pollution problem results from a wide variety of sources. While the endangerment test looks at the entire air pollution problem and the risks it poses, the cause or contribute test is designed to authorize the EPA to identify and then address what may well be many different sectors, classes, or groups of sources that are each part of the problem.

As explained for the 2009 Endangerment Finding, the D.C. Circuit has discussed the concept of contribution in the CAA, and its case law supports the EPA's interpretation that the level of contribution in this context need not be significant. 74 FR at 66542. In *Catawba County* v. *EPA*, 571 F.3d 20 (D.C. Cir. 2009), the court upheld EPA's $PM_{2.5}$ attainment and nonattainment designation decisions, analyzing CAA section 107(d), which requires EPA to designate an area as nonattainment if it "contributes to ambient air quality in a nearby area" that does not meet the national ambient air quality standards. *Id.* at 35. The court noted that it had previously held that the term "contributes" is ambiguous in the context of CAA language. *See EDF* v. *EPA*, 82 F.3d 451, 459 (D.C. Cir. 1996). "[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion." 571 F.3d at 35 (citing *Nat'l Cable & Telecomms. Ass'c* v. *Brand X Internet Servs,* 545 U.S. 967, 980 (2005)). The court then proceeded to consider and reject petitioners' argument that the verb "contributes" in CAA section 107(d) necessarily connotes a significant causal relationship. Specifically, the D.C. Circuit again noted that the term is ambiguous, leaving it to EPA to interpret in a reasonable manner. In the context of this discussion, the court noted that "a contribution may simply exacerbate a problem rather than cause it . . ." 571 F.3d at 39.

This is consistent with the D.C. Circuit's discussion of the concept of contribution in the context of CAA section 213 and rules for nonroad vehicles in *Bluewater Network* v. *EPA,* 370 F.3d 1 (D.C. Cir. 2004). In that case, industry argued that section 213(a)(3) requires a finding of a significant contribution from classes of new nonroad engines or vehicles to ozone or carbon monoxide concentrations before the EPA can regulate those engines or vehicles, while the EPA's view was that the CAA requires a finding only of contribution. *Id.* at 13. Section 213(a)(3)'s regulatory authority for specific classes of nonroad engines or vehicles, like that of section 231(a)(2)(A) for classes of aircraft engines, is triggered by a finding that certain sources "cause, or contribute to," air pollution, whereas an adjacent provision, section 213(a)(2), is triggered by a finding of a "significant" contribution from all new and existing nonroad engines and vehicles. The court looked at the "ordinary meaning of 'contribute' " when upholding the EPA's reading of section 213(a)(3). After referencing dictionary definitions of "contribute," the court also noted that "[s]tanding alone, the term has no inherent connotation as to the magnitude or importance of the relevant 'share' in the effect; certainly it does not incorporate any 'significance' requirement." 370 F.3d at 13.[83] The court found that the bare "contribute" language in section 213(a)(3) invests the Administrator with discretion to exercise judgment regarding what constitutes a sufficient contribution for the purpose of making a cause or contribute finding. *Id.* at 14.[84]

Like the statutory language considered in *Catawba County* and *Bluewater Network,* as well as the section 202(a) language that governed the Agency's previous findings for GHGs emitted by other types of mobile sources, section 231(a)(2)(A) refers to contribution and does not specify that the contribution must be significant before an affirmative finding can be made. To be sure, any finding of a "contribution" requires some measureable amount of pollutant emissions to be resulting from the analyzed source category; a truly trivial or *de minimis* "contribution" might not count as such (although such a small level is not presented by the facts of today's findings). The Administrator therefore has ample discretion in exercising her reasonable judgment and determining whether, under the circumstances presented, the cause or contribute criterion has been met.[85] As noted above, in addressing provisions in section 202(a), the D.C. Circuit has explained that the Act at the endangerment finding step did not require the EPA to identify a precise numerical value or "a minimum threshold of risk or harm before determining whether an air pollutant endangers." *CRR,* 684 F.3d at 122–123. Accordingly, EPA "may base an endangerment finding on 'a lesser risk of greater harm . . . or a greater risk of lesser harm' or any combination in between." *Id.* (quoting *Ethyl Corp.,* 541 F.2d at 18). Recognizing the substantial record of empirical data and scientific evidence that the EPA relied upon in the 2009 Endangerment Finding, the court determined that its "failure to distill this ocean of evidence into a specific number at which greenhouse gases cause 'dangerous' climate change is a function of the precautionary thrust of the CAA and the multivariate and sometimes uncertain nature of climate science, not a sign of arbitrary or capricious decision-making." *Id.* at 123. As the language in section 231(a)(2)(A) is analogous to that in section 202(a), it is clearly reasonable to apply this interpretation to the endangerment determination under section 231(a)(2)(A). Moreover, the logic underlying this interpretation supports the general principle that under CAA section 231 the EPA is not required to identify a specific minimum threshold of contribution from potentially subject source categories in determining whether their emissions "cause or contribute" to the endangering air pollution. The reasonableness of this principle is further supported by the fact that section 231 does not impose on the EPA a requirement to find that such contribution is "significant," let alone the sole or major cause of the endangering air pollution. This context further supports the EPA's interpretation that section 231(a)(2)(A) does not require some level of contribution that rises to a pre-determined numerical level or percentage- or mass-based portion of the overall endangering air pollution.

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[82] Thus, the statutory language does not require that the EPA prove the effects of climate change "beyond a reasonable doubt." Indeed, such an approach is inconsistent with the concepts of reasonable anticipation and endangerment embedded in the statute. *See also CRR,* 684 F.3d at 121–122.

[83] Specifically, the decision noted that " 'contribute' means simply 'to have a share in any act or effect,' Webster's Third New International Dictionary 496 (1993), or 'to have a part or share in producing,' 3 Oxford English Dictionary 849 (2d ed. 1989)." *Id.* at 13.

[84] The court explained, "[t]he repeated use of the term 'significant' to modify the contribution required for all nonroad vehicles, coupled with the omission of this modifier from the 'cause, or contribute to' finding required for individual categories of new nonroad vehicles, indicates that Congress did not intend to require a finding of 'significant contribution' for individual vehicle categories." *Id.* at 13.

[85] Section V discusses the evidence in this case that supports the finding of contribution. The EPA need not determine at this time the circumstances in which emissions would be trivial or *de minimis* and would not warrant a finding of contribution.

In addition, when exercising her judgment in making a cause or contribute determination, the Administrator not only considers the cumulative impact, but also looks at the totality of the circumstances and weight of evidence (*e.g.*, the air pollutant, the air pollution, the nature of the endangerment, the type or classes of sources at issue, the number of sources in the source sector or class, and the number and type of other source sectors or categories that may emit the air pollutant) when determining whether the emissions "justify regulation" under the CAA. *See Catawba County*, 571 F.3d at 39 (discussing EPA's interpretation of the term "contribute" under CAA section 107(d) and finding it reasonable for the agency to apply a totality of the circumstances approach); *see also* 74 FR at 66542. Further discussion of this issue can be found in sections IV and V of this preamble.

4. Summary of Responses to Key Legal Comments on the Interpretation of the CAA Section 231(a) Endangerment and Cause or Contribute Test

Here we summarize key public comments regarding the legal interpretation of CAA section 231(a)(2)(A) that supports this finding and the Agency's response. The Response to Comments document contains the Agency's full response to comments on this topic.

Some commenters strongly supported the proposed findings. These comments stated, for example, that the proposed findings were clearly authorized under CAA section 231(a)(2)(A) and further noted that the U.S. Supreme Court had upheld EPA's authority under section 202(a) of the CAA to make an endangerment finding with regard to GHG emissions from motor vehicles and that the findings required under section 202(a)(1) are the same as the findings required under section 231(a)(2)(A). Another commenter, however, questioned the EPA's authority to make endangerment and cause or contribute findings for GHGs, stating that the EPA had not sufficiently explained its authority to address pollutants other than NAAQS under CAA section 231. This commenter made the following points in support of this view. First, the comment pointed to the use of the term "air quality control regions" in CAA sections 231(a)(1)(A) and 231(a)(3) as suggesting that Congress intended to authorize EPA to issue standards only for pollutants for which a NAAQS has been established. Second, the comment stated that the EPA should address this issue in light of a recent Supreme Court case, *Utility Air Regulatory Grp.* v. *EPA*, 134 S.Ct. 2427 (2014).

After consideration of these comments, we disagree with the argument that Congress intended to only authorize the EPA to address NAAQS pollutants under section 231(a)(2)(A). That provision of the Act requires the EPA to issue standards "applicable to the emission *of any air pollutant* from any class or classes of aircraft engines which in [her] judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare." CAA section 231(a)(2)(A) (emphasis added). Looking to that plain language, there is nothing that limits the scope of the air pollutants that can be found to contribute to possible endangerment, and therefore which the EPA may be required to regulate, under that section to NAAQS pollutants. To the contrary, the language is clear that the EPA would be required to regulate aircraft engine emissions of "any air pollutant" as long the pre-requisite endangerment and cause or contribute findings are made. "Air pollutant" is not defined in section 231; instead, the definition under CAA section 302(g) applies, which states in relevant part that " 'air pollutant' means *any* air pollutant agent or combination of such agents, including *any* physical, chemical . . . substance or matter which is emitted into or otherwise enters ambient air." CAA section 302(g) (emphasis added). Interpreting this provision in *Massachusetts* v. *EPA*, the U.S. Supreme Court observed that "[o]n its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word 'any.' " 549 U.S. 497, 529 (2007). It further stated that "[b]ecause greenhouse gases fit well within" this "capacious definition of 'air pollutant' " the EPA has the statutory authority to regulate the emission of such gases from new motor vehicles under CAA section 202(a)(2). *Id.* at 532. As noted above, sections 231(a)(2)(A) and 202(a)(1) have parallel structures, use substantially the same language, and use the same definition of air pollutant. As that definition is "unambiguous" in its inclusion of GHGs, *Massachusetts*, 549 U.S. at 529, the Act clearly authorizes the EPA to make these findings for GHGs under CAA section 231(a)(2)(A). Moreover, one U.S. District Court has also ruled that the EPA has a duty to determine whether aircraft engine emissions of GHGs cause or contribute to endangerment, and that ruling was not appealed to the D.C. Circuit. *Center for Biological Diversity, et al.* v. *EPA*, 794 F. Supp. 2d 151 (D.D.C. 2011). Consequently, the statutory language imposing the EPA's duties under section 231(a)(2)(A), and relevant case law in the GHG context, do not support the commenter's limited reading of the EPA's authority under that language.

The commenter points to the use of the term "air quality control regions" in nearby paragraphs of CAA sections 231(a)(1)(A) and (a)(3) to support its suggestion that Congress intended to limit the EPA's analysis and regulatory authority to NAAQS pollutants in section 231(a)(2)(A). That argument is flawed for several reasons. The commenter points to section 231(a)(1), which relates to a study the EPA was to conduct of emissions of air pollutants from aircraft, and to section 231(a)(3), which requires the EPA to hold public hearings with respect to proposed standards under section 231(a)(2) in "air quality control regions . . . most seriously affected by aircraft emissions" to the extent practicable. These obligations are imposed in addition to those imposed by section 231(a)(2)(A), and their separate establishment does not by that fact narrow the EPA's scope of authority regarding its obligations imposed under section 231(a)(2)(A). They are additive, not subtractive, duties. Moreover, one of those added duties, to investigate the extent to which aircraft emissions affect air quality in air quality control regions under section 231(a)(1)(A), was a one-time duty that corresponded to NAAQS that have long-since been revised, whereas the EPA's duty to propose and promulgate aircraft emission standards is a continuing one to be conducted ''from time to time'' under section 231(a)(2)(A). The commenter provides no reasoning to explain why these provisions imposing additional duties should be read to limit the scope of section 231(a)(2) beyond their proximity. Sections 231(a)(1) and (a)(3) do not speak to what pollutants may be addressed under section 231(a)(2). Further, there is no incompatibility between the use of the term ''air quality control regions'' in those provisions to identify geographic areas where certain activities are to occur and making the endangerment and cause or contribute findings for GHGs that are finalized in this action. In fact, the EPA long ago discharged its one-time duty under CAA section 231(a)(1)(A)[86] and, after proposing new aircraft engine emission standards, could also meet its obligations to hold public hearings in the air quality control regions most seriously affected by aircraft emissions, to the extent practicable, all while meeting its obligations under section 231(a)(2)(A). Accordingly, the EPA does not interpret sections 231(a)(1) and (a)(3) to limit the scope of the duties and authority established by section 231(a)(2) to NAAQS pollutants. Further, the EPA has previously implemented section 231(a)(2) to reach air pollutants for which no NAAQS exists and has applied that provision to establish standards for non-NAAQS pollutants, such as smoke. *See, e.g.,* 40 CFR 87.21(a)–(c), (e), 87.23(a)–(c), and 87.31(a)–(c) emission standards for smoke. The EPA's regulation of non-NAAQS smoke emissions from aircraft engines has never been judicially challenged. Finally, even if the Act were ambiguous, which it is not, the EPA's interpretation of section 231(a)(2) to include authority to address GHGs, is reasonable for the reasons described above.

The U.S. Supreme Court's opinion in *UARG* cited by the commenter does not change this analysis. The commenter misinterprets the *UARG* decision to mean that for purposes of determining applicability of the CAA's Prevention of Significant Deterioration (PSD) preconstruction permitting program, ''air pollutant'' meant only pollutants for which NAAQS had been established. The *UARG* decision, however, does not limit PSD applicability to only NAAQS pollutants. In fact, the Court recognized that such theories had been advanced during the course of that litigation but expressly declined to consider them in its decision. *See* 134 S.Ct. 2427, 2442 n.6 (2014). Rather, in *UARG,* the Court's holding pertained only to GHGs. More specifically, the Court held that the EPA may not treat GHGs as an air pollutant for the specific purpose of determining whether a source is a major source (or a modification thereof) and thus required to obtain a PSD permit or an operating permit under title V of the CAA. *Id.* at 2449.

Further, the regulatory context that was addressed in *UARG* is distinguishable from that of this action. In *UARG,* the Court explained that *Massachusetts* does not prevent an Agency from using statutory context to infer that in some provisions ''air pollutant'' refers only to those airborne substances that ''may sensibly be encompassed within the particular regulatory program.'' 134 S.Ct. at 2441. However, the commenter offers no reason why GHG emissions from U.S. covered aircraft could not ''sensibly be encompassed'' under CAA section 231; nor is the EPA aware of any such reasons. In fact, *UARG* itself recognizes a distinction between the statutory scheme of the CAA permitting programs at issue in that case and the mobile source programs under Title II of the Act which were at issue in *Massachusetts.* Namely, the *UARG* opinion notes that part of the Court's reasoning in *Massachusetts* was based on its understanding that ''nothing in the Act suggested that regulating greenhouse gases under [Title II] would conflict with the statutory design. Title II would not compel EPA to regulate in any way that would be 'extreme,' 'counterintuitive,' or contrary to 'common sense.' . . . At most, it would require EPA to take the modest step of adding greenhouse-gas standards to the roster of new-motor-vehicle emission regulations.'' 134 S.Ct. at 2441 (quoting *Massachusetts,* 549 U.S. at 531). Like *Massachusetts,* the statutory provisions for this action are found in Title II, and closely parallel the structure and language of the statutory program at issue in *Massachusetts.*[87] *Compare* CAA section 231(a)(2)(A) *with* 202(a)(1). Nor will reading the Title II provision section 231(a)(2)(A) to extend to GHGs result in a regulatory outcome that would be extreme, counterintuitive or contrary to common sense. Instead, as the D.C. Circuit has previously ruled, the EPA's discretion when establishing reasonable standards under section 231 is exceptionally broad. *See NACAA,* 489 F.3d at 1230–32. In short, the *UARG* opinion in no way precludes the EPA's interpretation that ''air pollutant'' as used in CAA section 231(a)(2)(A) includes GHGs, but rather supports that interpretation.

To the extent that the commenter is suggesting that the EPA should exercise its discretion to interpret CAA section 231(a)(2)(A) to exclude GHGs, the EPA declines to do so. The commenter has provided no persuasive reason for such an exclusion. Moreover, to make the threshold findings in this action, the EPA must, fundamentally, answer only two questions: Whether the particular ''air pollution''—here, the six well-mixed GHGs—''may reasonably be anticipated to endanger public health or welfare,'' and whether emissions of those six well-mixed GHGs from U.S. covered aircraft engines ''cause, or contribute to'' that endangerment. *See CRR,* 648 F.3d at 117 (interpreting analogous provisions in CAA section 202(a)). Because the EPA answers both of these questions in the affirmative for emissions of the six well-mixed GHGs from U.S. covered aircraft engines—based on extensive scientific evidence and emissions information, as explained in detail in sections IV and V below—it is appropriate and reasonable to make both endangerment and cause or contribute findings under section 231(a)(2)(A) in this action.

In sum, after considering all of the relevant information, including that in public comments, the EPA interprets section 231(a)(2)(A) to include authority to address GHGs from U.S. covered aircraft engines. This interpretation is consistent with both its own and with judicial interpretations that the EPA's authority under the analogous section 202(a) unambiguously extends to GHGs.

B. Air Pollutant, Public Health and Welfare

The CAA defines both ''air pollutant'' and ''welfare.'' Air pollutant is defined as: ''any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used." CAA section 302(g). GHGs fit well within this capacious definition. *See Massachusetts* v. *EPA,* 549 U.S. at 532. They are "without a doubt" physical chemical substances emitted into the ambient air. *Id.* at 529. Section V below contains further discussion of the term "air pollutant" for purposes of this section 231(a)(2)(A) contribution finding, which uses the same definition of air pollutant as the one the EPA adopted for purposes of the 2009 Endangerment Finding.

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[86] USEPA, 1973: Aircraft Emissions: Impact On Air Quality And Feasibility Of Control. U.S. Environmental Protection Agency, 102 pp. Available at *http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=2000T6Z0.txt* (last accessed April 26, 2016).

[87] Although this comment asserts that section 202(a) does not include mention of ''air quality control region'' as other provisions of section 231(a) do, that distinction is immaterial. As described above, the use of that term in other paragraphs imposing additional duties beyond those established by section 231(a)(2)(A) does not affect what pollutants may be addressed under section 231(a)(2)(A).

Regarding "welfare," the CAA states that "[a]ll language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants." CAA section 302(h). This definition is quite broad. Importantly, it is not an exclusive list due to the use of the term "includes, but is not limited to . . ." Effects other than those listed here may also be considered effects on welfare.

Moreover, the terms contained within the definition are themselves expansive. For example, deterioration to property could include damage caused by extreme weather events. Effects on vegetation could include impacts from changes in temperature and precipitation as well as from the spreading of invasive species or insects. Prior welfare effects evaluated by the EPA in other contexts include impacts on vegetation, as well as reduced visibility, changes in nutrient balance and acidity of the environment, soiling of buildings and statues, and erosion of building materials. *See, e.g.,* Final Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur, 77 FR 20218 (April 3, 2012); Control of Emissions from Nonroad Large Spark Ignition Engines and Recreational Engines (Marine and Land-Based), 67 FR 68242 (November 8, 2002); Final Heavy-Duty Engine and Vehicle Standards and Highway Diesel Sulfur Control Requirements, 66 FR 5002 (January 18, 2001).

Although the CAA defines "effects on welfare" as discussed above, there is no definition of "public health" in the Clean Air Act. The Supreme Court has discussed the concept of "public health" in the context of whether costs can be considered when setting NAAQS. *Whitman* v. *American Trucking Ass'n,* 531 U.S. 457 (2001). In *Whitman,* the Court imbued the term with its most natural meaning: "the health of the public." *Id.* at 466. When considering public health, the EPA has looked at morbidity, such as impairment of lung function, aggravation of respiratory and cardiovascular disease, and other acute and chronic health effects, as well as mortality. *See, e.g.,* Final National Ambient Air Quality Standard for Ozone, 73 FR 16436 (March 27, 2008).

IV. The Administrator's Finding Under CAA Section 231 That Greenhouse Gases Endanger Public Health and Welfare

The Administrator finds, for purposes of CAA section 231(a)(2)(A), that elevated concentrations of the six well-mixed GHGs constitute air pollution that may reasonably be anticipated to endanger both the public health and welfare of current and future generations. The Administrator is making this finding specifically with regard to the same definition of the "air pollution" under CAA section 231(a)(2) as that used under CAA section 202(a)(1), namely the combined mix of CO_2, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, which together are the root cause and best understood drivers of human-induced climate change and the resulting impacts on public health and welfare. The EPA received public comments on this definition of air pollution from the proposed findings, and summarizes responses to some of those key comments below; fuller responses to public comments can be found in EPA's Response to Comments document included in the docket. The Administrator addresses other climate-forcing agents both in the 2009 Endangerment Finding[88] and in this action; however, these substances are not included in the air pollution definition used in this action for the reasons discussed below in section IV.B.7.

Section IV.A below discusses the EPA's approach to evaluating the scientific evidence before it. Section IV.B discusses the scope and nature of the relevant air pollution for the endangerment finding under CAA section 231(a)(2)(A), including a discussion of other substances with climate effects that were addressed but not included in the definition of air pollution. Section IV.C summarizes the scientific evidence that the air pollution is reasonably anticipated to endanger both public health and welfare. Section IV.D summarizes the Administrator's conclusion for purposes of section 231(a)(2)(A), in light of the evidence, analysis, and conclusions that led to the 2009 Endangerment Finding as well as more recent evidence and consideration of public comments, that emissions of the six well-mixed GHGs in the atmosphere may reasonably be anticipated to endanger public health and welfare.

A. The Science Upon Which the Agency Relied

This finding under section 231(a)(2)(A) reflects the EPA's careful consideration not only of the scientific and technical record for the 2009 Endangerment Finding, but also of science assessments released since 2009, which, as illustrated below, strengthen and further support the judgment that the six well-mixed GHGs in the atmosphere may reasonably be anticipated to endanger public health and welfare. The Administrator's view is that the body of scientific evidence amassed in the record for the 2009 Endangerment Finding compellingly supports an endangerment finding for the six well-mixed GHGs under CAA section 231(a)(2)(A). While the EPA is providing a summary of newer scientific assessments below, the EPA is also relying on the same scientific and technical evidence discussed in the notices for the 2009 Endangerment Finding in these final findings for purposes of CAA section 231(a)(2)(A).[89]

The EPA is following the same approach toward technical and scientific information in this finding under section 231(a)(2)(A) as it used in the 2009 Endangerment Finding. More specifically, in the 2009 Endangerment Finding the EPA's approach to providing the technical and scientific information to inform the Administrator's judgment regarding the question of whether GHGs endanger public health and welfare was to consider the recent, major assessments by the U.S. Global Change Research Program (USGCRP), the IPCC, and the National Research Council of the

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[88] 74 FR at 66519–21.

[89] See sections III of the 2009 Proposed Endangerment Finding and sections III and IV of the 2009 Endangerment Finding. 74 FR at 18894–18904 and 74 FR at 66510–36.

National Academies of Sciences, Engineering, and Medicine (referred to interchangeably as NRC or NAS) as the primary scientific and technical basis informing the endangerment finding. These assessments draw synthesis conclusions across thousands of individual peer-reviewed studies that appear in scientific journals, and the reports themselves undergo additional peer review. The EPA has considered the processes and procedures employed by the USGCRP, IPCC, and the NRC in terms of factors such as their objectivity, integrity, utility, and transparency, including how they have employed rigorous peer review processes. The EPA considers these assessments to represent the best available science that maintains the highest level of adherence to Agency guidelines for information quality.[90] These assessments have been adequately peer reviewed in a manner commensurate with the EPA's Peer Review Policy[91] and guidance in the EPA's Peer Review Handbook.[92]

The EPA is giving careful consideration to all of the scientific and technical information in the record. However, the Administrator considers the major scientific assessments as the primary scientific and technical basis of her endangerment decision. This provides assurance that the Administrator is basing her judgment on the best available, well-vetted science that reflects the consensus of the climate science research community. These assessments addressed the scientific issues that the EPA was required to examine, were comprehensive in their coverage of the GHG and climate change issues, and underwent rigorous and exacting peer review by the expert community, as well as rigorous levels of U.S. government review, in which the EPA took part. The major findings of the USGCRP, IPCC, and NRC assessments support the Administrator's determination that elevated concentrations of GHGs in the atmosphere may reasonably be anticipated to endanger the public health and welfare of current and future generations. The EPA presented this scientific support at length in the comprehensive record for the 2009 Endangerment Finding.

The EPA reviewed ten administrative petitions for reconsideration of the 2009 Endangerment Finding in 2010.[93] In the Reconsideration Denial, the Administrator denied those petitions on the basis of the Petitioners' failure to provide substantial support for their argument that the EPA should revise the 2009 Endangerment Finding and their objections' lack of "central relevance" to the Finding.[94] The EPA prepared an accompanying three-volume Response to Petitions document to provide additional information, often more technical in nature, in response to the arguments, claims, and assertions by the Petitioners to reconsider the Endangerment Finding.[95]

The 2009 Endangerment Finding and the 2010 Reconsideration Denial were challenged in a lawsuit before the D.C. Circuit.[96] On June 26, 2012, the D.C. Circuit upheld the Endangerment Finding and the Reconsideration Denial, ruling that the Finding (including the Reconsideration Denial) was not arbitrary or capricious, was consistent with the U.S. Supreme Court's decision in *Massachusetts* v. *EPA* (which affirmed the EPA's authority to regulate GHGs)[97] and the text and structure of the CAA, and was adequately supported by the administrative record.[98] The D.C. Circuit also agreed with the EPA that the Petitioners had "not provided substantial support for their argument that the Endangerment Finding should be revised."[99] It found that the EPA had based its decision on "substantial scientific evidence," observing that "EPA's scientific evidence of record included support for the proposition that greenhouse gases trap heat on earth that would otherwise dissipate into space; that this 'greenhouse effect' warms the climate; that human activity is contributing to increased atmospheric levels of greenhouse gases; and that the climate system is warming," as well as providing extensive scientific evidence for EPA's determination that anthropogenically induced climate change threatens both public health and welfare.[100] The D.C. Circuit further noted that the EPA's reliance on assessments was consistent with the methods decision-makers often use to make a science-based judgment.[101] Moreover, it supported the EPA's reliance on the major scientific assessment reports conducted by USGCRP, IPCC, and NRC and found:

> The EPA evaluated the processes used to develop the various assessment reports, reviewed their contents, and considered the depth of the scientific consensus the reports represented. Based on these evaluations, the EPA determined the assessments represented the best source material to use in deciding whether GHG emissions may be reasonably anticipated to endanger public health or welfare . . . It makes no difference that much of the scientific evidence in large part consisted of "syntheses" of individual studies and research. Even individual studies and research papers often synthesize past work in an area and then build upon it. This is how science works. The EPA is not required to re-prove the existence of the atom every time it approaches a scientific question.[102]

In addition, the EPA's consideration of the major assessments to inform the Administrator's judgment allowed for full and explicit recognition of scientific uncertainty regarding the endangerment posed by the atmospheric buildup of GHGs. The Administrator considered the fact that "some aspects of climate change science and the projected impacts are more certain than others."[103] The D.C. Circuit subsequently noted that "the existence of some uncertainty does not, without more, warrant invalidation of an endangerment finding." [104]

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[90] Applicable guidance includes U.S. EPA 2012: *Addendum to A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information,* 9 pp. Available at *https://www.epa.gov/risk/guidance-evaluating-and-documenting-quality-existing-scientific-and-technical-information* (last accessed July 11, 2016) and U.S. EPA, 2002: *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the EPA,* 61 pp. Available at *https://www.epa.gov/quality/guidelines-ensuring-and-maximizing-quality-objectivity-utility-and-integrity-information* (last accessed July 11, 2016).

[91] U.S. EPA, 2006: *Memorandum on Peer Review and Peer Involvement at the U.S. EPA,* 4 pp. Available at *https://www.epa.gov/osa/memorandum-peer-review-and-peer-involvement-epa* (last accessed April 12, 2016).

[92] U.S. EPA, 2015: *EPA Peer Review Handbook, Fourth Edition,* 248 pp. Available at *https://www.epa.gov/osa/peer-review-handbook-4th-edition-2015-0* (last accessed April 12, 2016). Also, the EPA Science Advisory Board reviewed this approach to the underlying technical and scientific information supporting this action, and concluded that the approach had precedent and the action will be based on well-reviewed information. A copy of this letter and all other relevant EPA peer review documentation is located in the docket for today's final action (EPA–HQ–OAR–2014–0828).

[93] Administrative petitions are available from *www3.epa.gov/climatechange/endangerment/petitions.html* (last accessed June 21, 2016), and in the docket for the 2009 Endangerment Finding: EPA–HQ–OAR–2009–0171.

[94] U.S. EPA, 2010: *Denial of the Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases Under section 202(a) of the Clean Air Act,* 75 FR 49557 (August 13, 2010) ("Reconsideration Denial"). In that notice, the EPA thoroughly considered the scientific and technical information relevant to the petitions. In addition to the other information discussed in the present notice, the EPA is also relying on the scientific and technical evidence discussed in that prior notice for purposes of its proposed determination under CAA section 231. See section III of the Reconsideration Denial.

[95] The Response to Petitions document is available from *www3.epa.gov/climatechange/endangerment/petitions.html* (last accessed June 21, 2016), and in the docket for the 2009 Endangerment Finding: EPA–HQ–OAR–2009–0171.

[96] *Coalition for Responsible Regulation, Inc.* v. *Environmental Protection Agency,* 684 F.3d 102 (D.C. Cir. 2012), *reh'g en banc denied,* 2012 U.S. App. LEXIS 25997, 26313, 26315 (D.C. Cir. 2012) (*CRR*).

[97] 549 U.S. 497 (2007).

[98] *CRR,* 684 F.3d at 117–27.

[99] *Id.* at 125.

[100] *Id.* at 120–121.

[101] *Id.* at 121.

[102] *Id.* at 120.

[103] 74 FR at 66524.

As noted above, the Supreme Court granted some of the petitions for *certiorari* that were filed, while denying others, but agreed to decide only the question: "Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases." [105] Thus, the Supreme Court did not disturb the D.C. Circuit's holding that affirmed the 2009 Endangerment Finding.

Since the closure of the administrative record concerning the 2009 Endangerment Finding (including the denial of petitions for reconsideration), a number of new major, peer-reviewed scientific assessments have been released. The EPA carefully reviewed the updated scientific conclusions in these assessments, largely to evaluate whether they would lead the EPA in this CAA section 231(a)(2)(A) finding to use a different interpretation of, or place more or less weight on, the major findings reflected in the previous assessment reports that underpinned the Administrator's judgment that the six well-mixed GHGs endanger public health and welfare. The EPA reviewed the following new major peer-reviewed scientific assessments:

- IPCC's 2013–2014 Fifth Assessment Report (AR5) [106]
- IPCC's 2012 "Special Report on Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation" (SREX) [107]
- USGCRP's 2014 "Climate Change Impacts in the United States: the Third National Climate Assessment" (NCA3) [108]
- NRC's 2010 "Ocean Acidification: A National Strategy to Meet the Challenges of a Changing Ocean" (Ocean Acidification) [109]
- NRC's 2011 "Climate Change, the Indoor Environment, and Health" (Indoor Environment) [110]
- NRC's 2011 "Report on Climate Stabilization Targets: Emissions, Concentrations, and Impacts over Decades to Millennia" (Climate Stabilization Targets) [111]
- NRC's 2011 "National Security Implications for U.S. Naval Forces" (National Security Implications) [112]
- NRC's 2011 "Understanding Earth's Deep Past: Lessons for Our Climate Future" (Understanding Earth's Deep Past) [113]
- NRC's 2012 "Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future" (Sea Level Rise) [114]
- NRC's 2013 "Climate and Social Stress: Implications for Security Analysis" (Climate and Social Stress) [115]
- NRC's 2013 "Abrupt Impacts of Climate Change" (Abrupt Impacts) [116]
- NRC's 2014 "The Arctic in the Anthropocene: Emerging Research Questions" (Arctic) [117].

From its review, the EPA finds that these new assessments are largely consistent with, and in many cases strengthen and add to, the already compelling and comprehensive scientific evidence detailing the role of the six well-mixed GHGs in driving climate change, explained in the 2009 Endangerment Finding.

1. Response to Key Comments on the EPA's Approach to the Science

Here we summarize key public comments regarding the approach to the science—see the Response to Comments document for the Agency's full responses to comments. Several commenters agreed and no commenters disagreed with the EPA's approach to the science for making an endangerment decision specifically with respect to the six well-mixed GHGs (see section IV.B.7 for a summary of key public comments and our responses to commenters who argued that the science supports expanding the scope of the endangerment finding to include other climate forcers beyond the six well-mixed GHGs). They specifically mentioned their support for the EPA's approach to considering the scientific and technical information in the record of the 2009 Endangerment Finding—primarily the recent, major assessments by the USGCRP, the IPCC, and the NRC—as well as the most recent scientific assessments for additional support and justification. For the reasons stated in section IV.A above, the EPA agrees with the commenters that this approach ensures that the Administrator considers the best available scientific and technical information.

B. The Air Pollution Consists of Six Key Well-Mixed Greenhouse Gases

The Administrator must define the scope and nature of the relevant air pollution for the endangerment finding under CAA section 231(a)(2)(A). In this final action, the Administrator finds that the air pollution is the combined mix of six well-mixed GHGs, which together are the root cause and best understood drivers of human-induced climate change and the resulting impacts on public health and welfare. These six GHGs—CO_2, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—are considered an aggregate group for purposes of this finding. The Administrator's definition of air pollution for purposes of section 231(a)(2)(A) is made in light of (1) the evidence, analysis, and conclusions that led to the 2009 Endangerment Finding; (2) more recent evidence from scientific assessments published since 2009; and (3) consideration of public comments, for which key comments and responses are summarized in sections IV.B.6 and 7 below. The Administrator considered five primary reasons in the 2009 Endangerment Finding for focusing on this aggregate group as the air pollution: (1) They share common physical properties that influence their climate effects; (2) on the basis of these common physical properties, they have been determined to be the root cause of human-induced climate change, are the best-understood driver of climate change, and are expected to remain the primary driver of future climate change; (3) they are the common focus of climate change science research and policy analyses and discussions; (4) using the combined mix of these gases as the definition (versus an individual gas-by-gas approach) is consistent with the science, because risks and impacts associated with GHG-induced climate change are not assessed on an individual gas-by-gas basis; and (5) using the combined mix of these gases is consistent with past EPA practice, where separate substances from different sources, but with common properties, may be treated as a class (*e.g.*, oxides of nitrogen, particulate matter, volatile organic compounds).[118] After consideration of all information before her, including public comments, as explained below, the Administrator maintains her view that these five reasons for defining the scope and nature of the air pollution to be these six well-mixed GHGs remain valid and well supported by the current science and are therefore reasonable bases for adopting the same definition of "air pollution" in this section 231(a)(2)(A) finding as that under section 202(a)(1). The following subsections summarize the five reasons detailed in the 2009 Endangerment Finding and as appropriate, summarize additional supporting information from the recent scientific assessments published since 2009.

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[104] *CRR,* 684 F.3d at 121.

[105] *Utility Air Reg. Group* v. *EPA,* 134 S. Ct. 2427, 2438 (2014) (internal marks and citations omitted). *See also Virginia* v. *EPA,* 134 S. Ct. 418 (2013), *Pac. Legal Found.* v. *EPA,* 134 S. Ct. 418 (2013), and *CRR,* 134 S. Ct. 468 (2013) (all denying cert.).

[106] IPCC, 2013: *Climate Change 2013: The Physical Science Basis.* Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)].Cambridge University Press, 1535 pp, doi:10.1017/CBO9781107415324; IPCC, 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects.* Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, 1132 pp; IPCC, 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects.* Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Barros, V.R., C.B. Field, D.J. Dokken, M.D. Mastrandrea, K.J. Mach, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, 688 pp; and IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change.* Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, 1435 pp.

[107] IPCC, 2012: *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation.* A Special Report of Working Groups I and II of the Intergovernmental Panel on Climate Change [Field, C.B., V. Barros, T.F. Stocker, D. Qin, D.J. Dokken, K.L. Ebi, M.D. Mastrandrea, K.J. Mach, G.-K. Plattner, S.K. Allen, M. Tignor, and P.M. Midgley (eds.)]. Cambridge University Press, 582 pp.

[108] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, 841 pp.

[109] NRC, 2010: *Ocean Acidification: A National Strategy to Meet the Challenges of a Changing Ocean.* The National Academies Press, 188 pp.

[110] NRC Institute of Medicine, 2011: *Climate Change, the Indoor Environment, and Health.* Washington, DC: The National Academies Press, 272 pp.

[111] NRC 2011: *Climate Stabilization Targets: Emissions, Concentrations, and Impacts over Decades to Millennia.* The National Academies Press, 298 pp.

[112] NRC, 2011: *National Security Implications of Climate Change for U.S. Naval Forces.* The National Academies Press, 226 pp.

[113] NRC, 2011: *Understanding Earth's Deep Past: Lessons for Our Climate Future.* The National Academies Press, 212 pp.

[114] NRC, 2012: *Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future.* The National Academies Press, 201 pp.

[115] NRC, 2013: *Climate and Social Stress: Implications for Security Analysis.* The National Academies Press, 280 pp.

[116] NRC, 2013: *Abrupt Impacts of Climate Change: Anticipating Surprises.* The National Academies Press, 250 pp.

[117] NRC, 2014: *The Arctic in the Anthropocene: Emerging Research Questions.* The National Academies Press, 220 pp.

1. Common Physical Properties of the Six Greenhouse Gases

The six GHGs share common physical properties that are relevant to the climate change problem. They all are sufficiently long lived in the atmosphere such that, once emitted, concentrations of each gas become globally well mixed in the atmosphere.[119] A well-mixed gas has relatively uniform concentrations in the atmosphere anywhere around the globe, with little local or regional variation except immediately next to sources or sinks. A given amount of a well-mixed gas emitted anywhere will have similar impacts on global concentrations regardless of the geographic location of emission. All six GHGs trap outgoing heat that would otherwise escape to space, and all are directly emitted from a source as a GHG rather than becoming a GHG in the atmosphere after emission of a precursor gas. This fundamental scientific understanding of the intrinsic physical, chemical, and atmospheric properties of the six GHGs has not changed and remains supported by the more recent climate change assessments.

2. The Six Well-Mixed Greenhouse Gases Are the Primary and Best Understood Driver of Current and Projected Climate Change

The Administrator judges that the scientific evidence is compelling that together the six well-mixed GHGs constitute the largest anthropogenic driver of climate change. In addition, the six well-mixed GHGs are the best-understood driver of climate change because they have well-understood physical properties as described above that govern their climate effect (*e.g.*, their radiative forcing, a measure of their total net effect on the global energy balance). As explained in more detail in the 2009 Endangerment Finding,[120] the Administrator made the judgment that the scientific evidence is compelling that elevated concentrations of heat-trapping GHGs are the root cause of recently observed climate change and that the scientific record showed that most of the observed increase in global average temperatures since the mid-20th century is very likely due to the observed increase in anthropogenic GHG concentrations. The attribution of observed climate change to anthropogenic activities was based on multiple lines of evidence. The first line of evidence arises from our basic physical understanding of the effects of changing concentrations of GHGs, natural factors, and other human impacts on the climate system. The second line of evidence arises from indirect, historical estimates of past climate changes that suggest that the changes in global surface temperature over the last several decades are unusual. The third line of evidence arises from the use of computer-based climate models to simulate the likely patterns of response of the climate system to different forcing mechanisms (both natural and anthropogenic). Observed increases in global average air temperatures are driving observed climate impacts like widespread melting of snow and ice and rising global average sea level. The Administrator also considered these observed changes as additional evidence of the unequivocal warming of the climate system driven primarily by elevated atmospheric GHG concentrations because the consistency of these observed changes in physical and biological systems and the observed significant warming cannot be explained entirely due to natural variability or other confounding non-climate factors.

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[118] 74 FR at 66517–19.

[119] The properties "long lived" and "well mixed" used in this document mean that the gas has a lifetime in the atmosphere sufficient to become globally well mixed throughout the entire atmosphere, which requires a minimum atmospheric lifetime of about one year. Atmospheric lifetime is a measure of how long a type of molecule is likely to remain in the atmosphere before it breaks down, reacts with other gases, or is absorbed by Earth's surface. The IPCC often refers interchangeably to the six well-mixed GHGs as long-lived GHGs; however, the IPCC and others in the international climate change community, such as the United Nations Environment Programme, also refer to methane and some HFCs as "near-term climate forcers," "short-lived climate forcers," or "short-lived climate pollutants." These terms refer to those compounds whose impacts on Earth's climate occurs primarily with the first decade after their emission. According to the IPCC AR5 (2014), methane has an atmospheric lifetime of about 12 years. One of the most commonly used hydrofluorocarbons (HFC–134a) has a lifetime of about 13 years. Thus, methane and some HFCs are both short- and long-lived GHGs—*i.e.*, they have lifetimes long enough to become globally well mixed in the atmosphere, but short enough to primarily affect Earth's climate within a decade after their emission. For comparison, nitrous oxide has a lifetime of around 130 years; sulfur hexafluoride over 3,000 years; and some perfluorocarbons up to 10,000 to 50,000 years. CO_2 is sometimes approximated as having a lifetime of roughly 100 years, but for a given amount of CO_2 emitted, a better description is that some fraction of the atmospheric increase in concentration is quickly absorbed by the oceans and terrestrial vegetation, some fraction of the atmospheric increase will only slowly decrease over a number of years, and a small portion of the increase will remain for many centuries or more.

[120] 74 FR at 66517–18.

In addition, as described in more detail in the 2009 Endangerment Finding,[121] the Administrator made the judgment that the scientific evidence is compelling that six GHGs are expected to remain the primary driver of future climate change and that, without substantial and near-term efforts to significantly reduce emissions, it can be expected that atmospheric concentrations of the six GHGs will continue to climb and thus lead to ever greater rates of climate change. Given the long atmospheric lifetime of the six well-mixed GHGs, which range from roughly a decade to centuries, future atmospheric GHG concentrations for the remainder of this century and beyond will be influenced not only by future emissions but indeed by present-day and near-term emissions. Consideration of future plausible scenarios, and how our current GHG emissions essentially commit present and future generations to cope with an altered atmosphere and climate, reinforces the Administrator's judgment that it is appropriate to define the combination of the six key greenhouse gases as the air pollution. Most future scenarios that assume no explicit GHG mitigation actions (beyond those already enacted) project increasing global GHG emissions over the century, which in turn result in climbing GHG concentrations. Concentrations of the six well-mixed GHGs increase even for those scenarios where annual emissions toward the end of the century are assumed to be lower than current annual emissions.

The EPA has also carefully reviewed the recent assessments of the IPCC, USGCRP, and NRC. The EPA finds that these recent assessments support and strengthen the evidence cited in the 2009 Endangerment Finding that current atmospheric GHG concentrations are now at elevated and essentially unprecedented levels primarily as a result of both historic and current anthropogenic emissions. The 2014 USGCRP NCA3 states, "Atmospheric levels measured at Mauna Loa in Hawai'i and at other sites around the world reached 400 parts per million in 2013, higher than the Earth has experienced in over a million years." [122] Such concentrations are the primary driver of observed changes in Earth's climate system, namely increased global average temperatures that drive climate impacts like widespread melting of snow and ice and rising global average sea level (discussed in more detail in section IV.C). The recent assessments of the IPCC, USGCRP, and NRC also describe how these six well-mixed GHGs play a dominant role in future warming of the climate system. The USGCRP NCA3 makes the following finding with very high confidence: "The magnitude of climate change beyond the next few decades depends primarily on the amount of heat-trapping gases emitted globally, and how sensitive the Earth's climate is to those emissions." [123] Key findings from the recent assessments regarding global and U.S. trends are described briefly below.

a. Key Observed Trends Driven Primarily by the Six Well-Mixed GHGs

According to the IPCC AR5, observations of the Earth's globally averaged combined land and ocean surface temperature over the period 1880 to 2012 show a warming of 0.85 [0.65 to 1.06] degrees Celsius or 1.53 [1.17 to 1.91] degrees Fahrenheit.[124] The IPCC AR5 concludes that the increase in atmospheric GHG concentrations since 1750, plus other human activities (*e.g.,* land use change and aerosol emissions), has had a radiative forcing effect estimated to be 2.3 Watts per square meter (W/m^2) in 2011.[125] Radiative forcing is a measure of a substance's total net effect on the global energy balance for which a positive number represents a warming effect and a negative number represents a cooling effect. The IPCC's estimate is an increase from the previous 2007 IPCC Fourth Assessment Report (AR4) total net estimate of 1.6 W/m^2 that was referred to in the record for the 2009 Endangerment Finding. The reasons for this increase include continued increases in GHG concentrations, as well as reductions in the estimated negative forcing due to aerosol particles. The IPCC AR5 rates the level of confidence [126] in their radiative forcing estimates as "high" for methane and "very high" for CO_2 and nitrous oxide.

The new assessments also have greater confidence since the 2009 Endangerment Finding in attributing recent warming to human causes. The IPCC AR5 stated that it is extremely likely (>95 percent likelihood) that human influences have been the dominant cause of warming since the mid-20th century, which is an even stronger statement than the AR4 conclusion that it is very likely (>90 percent likelihood) that most of the increase in temperature since the mid-20th century was due to the observed increase in anthropogenic GHG concentrations. The AR4 conclusion was referred to in the record for the 2009 Endangerment Finding. In addition, the IPCC AR5 found that concentrations of CO_2 and several other of the major GHGs are higher than they have been in at least 800,000 years. This is an increase from what was reported in IPCC AR4, which found higher concentrations than in at least 650,000 years.

The USGCRP NCA3 states that there is very high confidence [127] that the global climate change of the past 50 years is primarily due to human activities. Human activities are affecting climate through increasing atmospheric levels of heat-trapping GHGs, through changing levels of various particles that can have either a heating or cooling influence on the atmosphere, and through activities such as land use changes that alter the reflectivity of the Earth's surface and cause climatic warming and cooling effects. The USGCRP concludes that "considering all known natural and human drivers of climate since 1750, a strong net warming from long-lived greenhouse gases produced by human activities dominates the recent climate record." [128]

These recent and strong conclusions attributing recent observed global warming to human influence have been made despite what some have termed a warming slowdown or "hiatus" over the past 15 years or so. The IPCC AR5 notes that global mean surface temperature exhibits substantial natural decadal and interannual variability. Short-term variability does not alter conclusions about the long-term climate trend that the IPCC AR5 finds after its review of independently verified observational records: "Each of the past three decades has been successively warmer at the Earth's surface than all the previous decades in the instrumental record, and the first decade of the 21st century has been the warmest." [129] [130]

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[121] 74 FR at 66518–19.

[122] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 739.

[123] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p.20. See also p. 736: "Past emissions of heat-trapping gases have already committed the world to a certain amount of future climate change. How much more the climate will change depends on future emissions and the sensitivity of the climate system to those emissions."

[124] "IPCC, 2013: *Summary for Policymakers. In: Climate Change 2013: The Physical Science Basis.* Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, 29 pp.

[125] Ibid.

[126] The IPCC expresses levels of confidence using five qualifiers: Very low, low, medium, high, and very high. These levels are based on a qualitative evaluation of the robustness of the evidence (considering the type, amount, quality, and consistency of evidence such as data, mechanistic understanding, theory, models, and expert judgment) and the degree of agreement among the findings.

[127] The NCA expresses levels of confidence using four qualifiers: low, medium, high, and very high. These levels are based on the strength and consistency of the observed evidence; the skill, range, and consistency of model projections; and insights from peer-reviewed sources.

[128] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 741.

Temperature trends at the global level have also been observed regionally and in the United States. In the Northern Hemisphere, the IPCC AR5 finds that the last 30 years were likely the warmest 30-year period of the last 1400 years. The USGCRP NCA3 states with very high confidence that "U.S. average temperature has increased by 1.3 °F to 1.9 °F since record keeping began in 1895; most of this increase has occurred since about 1970. The most recent decade was the nation's warmest on record." [131] The USGCRP also notes that the rate of U.S. temperature increase over the past 4 to 5 decades has been greater than the rate observed in earlier decades.

b. Key Projections Based Primarily on Future Scenarios of the Six Well-Mixed GHGs

Future temperature changes will depend on what path the world follows with respect to GHG emissions and associated levels of GHG concentrations in the atmosphere. The NRC Climate Stabilization Targets assessment concludes that CO_2 emissions are currently altering the atmosphere's composition and will continue to alter Earth's climate for thousands of years. The NRC Understanding Earth's Deep Past assessment finds that "the magnitude and rate of the present greenhouse gas increase place the climate system in what could be one of the most severe increases in radiative forcing of the global climate system in Earth history." [132] A key future projection of this assessment is that by the end of the century, if no emissions reductions are made, CO_2 concentrations are projected to increase to levels that Earth has not experienced for more than 30 million years. In its high emission scenario, the IPCC AR5 projects that global temperatures by the end of the century will likely be 2.6 to 4.8 degrees Celsius (4.7 to 8.6 degrees Fahrenheit) warmer than today. Temperatures on land and in northern latitudes will likely warm even faster than the global average.

For the United States, the USGCRP NCA3 concludes, "Warming is ultimately projected for all parts of the nation during this century. In the next few decades, this warming will be roughly 2 °F to 4 °F in most areas. By the end of the century, U.S. warming is projected to correspond closely to the level of global emissions: roughly 3 °F to 5 °F under lower emissions scenarios (B1 or RCP 4.5) involving substantial reductions in emissions, and 5 °F to 10 °F for higher emissions scenarios (A2 or RCP 8.5) that assume continued increases in emissions; the largest temperature increases are projected for the upper Midwest and Alaska." [133]

3. The Six Well-Mixed GHGs Are Currently the Common Focus of the Climate Change Science and Policy Communities

The six well-mixed GHGs are currently the common focus of climate science and policy analyses and discussions. Grouping them is consistent with the focus of international and domestic climate science research enterprises like the IPCC and USGCRP. The IPCC and USGCRP assessment reports assess the climate change effects on health, society, and the environment as a result of human-induced climate change driven primarily by the group of six gases.

Grouping them is also consistent with the focus of climate policy. The United Nations Framework Convention on Climate Change (UNFCCC), signed and ratified by the United States in 1992, requires its signatories to "develop, periodically update, publish and make available . . . national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies . . ." [134] To date, the primary focus of UNFCCC actions and discussions has been on the six well-mixed GHGs, including the recent Paris Agreement in which Parties agreed to undertake nationally determined contributions to achieving the goal of "global peaking of GHG emissions as soon as possible" in order to reach a long-term global temperature target.[135] Domestically, the EPA has been developing standards for GHG emissions from mobile and stationary sources under the Clean Air Act since finalizing the 2009 Endangerment Finding.

4. Defining Air Pollution as the Aggregate Group of Six GHGs Is Consistent With Evaluation of Risks and Impacts Due to Human-Induced Climate Change

Based on her review of the science described in detail above in section IV.B.2, the Administrator judges that the six well-mixed GHGs constitute the largest anthropogenic driver of climate change and play a dominant role in observed and projected changes in Earth's climate system. Thus, the Administrator finds, as she did in the 2009 Endangerment Finding, that because the six well-mixed GHGs are collectively the primary driver of current and projected human-induced climate change, the current and future risks (here described in section IV.C below) due to human-induced climate change—whether these risks are associated with increases in temperature, changes in precipitation, a rise in sea levels, changes in the frequency and intensity of weather events, or more directly with the elevated GHG concentrations themselves—can be associated with this definition of air pollution. Due to the cumulative purpose of the statutory language, even if the Administrator were to look at the atmospheric concentration of each GHG individually, she would still consider the impact of the concentration of a single GHG in combination with that caused by the other GHGs.

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[129] IPCC, 2013: *Climate Change 2013: The Physical Science Basis.* Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)].Cambridge University Press, p. 161.

[130] Furthermore, we note that according to both NOAA and NASA, 2015 was the warmest year in the modern instrumental record for globally averaged surface temperature, breaking the record previously held by 2014. This now means that the last fifteen years have been fifteen of the sixteen warmest years on record. Available at *http://www.ncdc.noaa.gov/sotc/global/201513* (last accessed April 11, 2016).

[131] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 28.

[132] NRC, 2011: *Understanding Earth's Deep Past: Lessons for Our Climate Future.* The National Academies Press, p. 138.

[133] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 29.

[134] United Nations Framework Convention on Climate Change, 1992: Article 4(1)(a) of the United Nations Framework Convention on Climate Change, p. 10. Available at *https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf* (last accessed April 11, 2016).

[135] United Nations Framework Convention on Climate Change, 2015: *Adoption of the Paris Agreement Conference of the Parties Twenty-first session Paris,* FCCC/CP/2015/L.9/Rev.1, 12 December 2015, Available at: *https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf* (last accessed April 8, 2016).

5. Defining Air Pollution as the Aggregate Group of Six GHGs Is Consistent With Past EPA Practice

Treating the air pollution as the aggregate of the well-mixed GHGs is consistent with other provisions of the CAA and previous EPA practice under the CAA, where separate emissions from different sources but with common properties may be treated as a class (*e.g.*, particulate matter (PM)). This approach addresses the total, cumulative effect that the elevated concentrations of the six well-mixed GHGs have on climate and, thus, on different elements of health, society, and the environment. The EPA treats, for example, PM as a common class of air pollution; PM is a complex mixture of extremely small particles and liquid droplets. Particle pollution is made up of a number of components, including acids (such as nitrates and sulfates), organic chemicals, metals, and soil or dust particles.

6. Response to Key Comments on Defining the Air Pollution as the Aggregate Group of the Six Well-Mixed Greenhouse Gases

Many commenters agreed with the EPA that the "air pollution" for purposes of the endangerment finding under section 231(a)(2)(A) of the CAA should be defined as the six well-mixed GHGs. Several commenters discussed the fact that aircraft engines emit only two of the six well-mixed GHGs. Commenters pointed out that the majority of aircraft emissions are CO_2, while nitrous oxide emissions are described as "nominal (<1%)" or "trace." Some commenters ultimately concluded that the EPA's approach to defining the air pollution as an aggregate group of six gases is acceptable, but that the scope of future regulations should be limited to CO_2. One commenter agreed with the Agency's evaluation of the six GHGs based on their common attributes, but questioned the EPA's decision to aggregate the six gases rather than considering them individually for purposes of making the findings. Other commenters disagreed with the EPA and requested limiting the definition of air pollution in this action to CO_2 or to CO_2 and nitrous oxide.

The EPA disagrees with comments regarding changing the definition of the air pollution to limit it to only those GHGs that are emitted from aircraft or to CO_2 only. The EPA has explained both in the 2009 Endangerment Finding and in the proposed findings under CAA section 231(a)(2)(A) that the definition of the air pollution is based on shared characteristics and common attributes relevant to climate change science and policy[136]—which is not affected by the identity of the source(s) of the emissions contributing to the air pollution. The EPA recognized in the proposed findings that aircraft emit two of the six well-mixed GHGs but stated that nonetheless it is entirely reasonable and appropriate, and in keeping with the 2009 Endangerment Finding and past EPA practice, for the Administrator to group into a single class those substances that possess shared relevant properties, even though they are not all emitted from the classes of sources before her.[137] After considering all the comments, this continues to be the EPA's view. Moreover, this approach to defining air pollution (and air pollutant, as described below) as a grouping of many substances is not unique to GHGs but rather is common practice under the CAA, for example for particulate matter and volatile organic compounds.

The five primary reasons for grouping the six well-mixed GHGs are explained in detail above in sections IV.B.1 through IV.B.5. Because the well-mixed GHGs are collectively the primary driver of current and projected human-induced climate change, all current and future risks due to human-induced climate change can be associated with this definition of air pollution. Thus, this grouping is consistent with evaluation of the scientific issues that the EPA is required to examine in this endangerment finding, namely the risks and impacts due to human-induced climate change. As discussed above, the key scientific evidence and observations that are the basis of this finding focus on the combined six well-mixed GHGs, and did not assess risks and impacts associated with greenhouse gas-induced climate change using an individual gas approach. Accordingly, we are not undertaking a separate endangerment analysis for each of the six well-mixed gases individually.

The question of limits to the scope of future regulations is outside of the scope of this action because the EPA has neither proposed nor is finalizing in this action any such regulatory standards. This final action does not itself impose any requirements on source categories under CAA section 231. Thus, the EPA anticipates that this question could be raised and considered, as needed, in the standard-setting phase of the regulatory process, and the EPA will consider comments submitted on the issue of the appropriate form of emission standards in response to EPA's anticipated future notice of proposed rulemaking on standards. Although this final action establishes a duty for the EPA to promulgate standards for the GHG emissions from engines used by covered aircraft, the findings do not pre-judge the form that such standards may take.

Another commenter expressed concern about EPA's proposed endangerment finding because it does not differentiate between CO_2 emissions that result from combustion of fossil fuels and those that result from "combustion of biomass or biofuels derived from herbaceous crops or crop residues, as well as biogenic CO_2 emissions associated with the production, gathering and processing of crops or crop residues used in bio-based products including fuels."[138] The commenter argues that such crop-related biogenic CO_2 emissions should be excluded from the endangerment finding because the CO_2 released back to the atmosphere when emitted from crop-derived biogenic sources contains the same carbon that was previously removed or sequestered from CO_2 in the atmosphere and thus does not contribute to elevated atmospheric concentrations of the six well-mixed GHGs.

The EPA reiterates that the Administrator defines the relevant air pollution considered in the endangerment finding as the aggregate group of the six well-mixed GHGs based on shared physical characteristics and common attributes relevant to climate change science and policy, which is not affected by consideration of the sources of the emissions contributing to the air pollution. In the record for the 2009 Endangerment Finding, the Agency stated that "all CO_2 emissions, regardless of source, influence radiative forcing equally once it reaches the atmosphere and therefore there is no distinction between biogenic and non-biogenic CO_2 regarding the CO_2 and the other well-mixed GHGs within the definition of air pollution that is reasonably anticipated to endanger public health and welfare."[139] The EPA continues to hold that position in these findings, which is supported by the evidence before it. First, the fact that these CO_2 emissions originate from combustion of carbon-based fuels created through different processes is not relevant to defining the air pollution that is reasonably anticipated to endanger public health and welfare. The origin and constitution of a fuel prior to its combustion and subsequent emission into the atmosphere has no bearing on the fact that CO_2 and the other well-mixed GHGs are all sufficiently long lived to become well mixed in the atmosphere, directly emitted, of well-known radiative forcing, and generally grouped and considered together in climate change scientific and policy forums as the primary driver of climate change. Moreover, as explained in section IV.C of this document, the endangerment arises from the elevated concentrations of the six well-mixed GHGs in the atmosphere. A molecule of biogenic CO_2 has the same radiative forcing effect as a molecule of fossil-fuel derived CO_2. In other words, no matter the original source of the CO_2, the behavior of the CO_2 molecules in the atmosphere in terms of radiative forcing, chemical reactivity, and atmospheric lifetime is effectively the same. Any differential treatment of biogenic CO_2 in the context of the endangerment finding would be inconsistent with the primary scientific basis for the grouping of the six well-mixed GHGs as a single class for purposes of identifying the air pollution (and air pollutant, as explained below). A more detailed response to the issues raised in this comment can be found in the Response to Comments document in the docket.

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[137] 80 FR at 37774, 37785 and 37787.

[138] Biogenic CO_2 Coalition, 2015: Comments on EPA's Proposed Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare, 80 FR 37757 (July 1, 2015). Docket ID number EPA–HQ–OAR–2014–0828–0916. Available at *www.regulations.gov* (last accessed April 11, 2016).

[139] EPA, 2009. Response to Comments document, Volume 9: The Endangerment Finding, EPA–HQ–OAR–2009–0171–11676. Available at *www.regulations.gov* (last accessed April 11, 2016).

7. Other Climate Forcers Not Being Included in the Definition of Air Pollution for This Finding

Both in the 2009 Endangerment Finding and in this action, the Administrator recognizes that there are other substances in addition to the six well-mixed GHGs that are emitted from human activities and that affect Earth's climate (referred to as climate forcers). However, as described in more detail in the 2009 Endangerment Finding and in the proposed findings under CAA section 231(a)(2)(A),[140] these substances do not fit within one or more of the five primary reasons for focusing on this aggregate group as the air pollution. As described in the following subsections, we received comments on the omission of water vapor, NO_X, and aerosol particles emitted from aircraft from the proposed definition of air pollution for this finding, but not on the omission of other climate forcers. After considering public comments and additional information in the new assessments regarding the climate-relevant substances outside the group of the six well-mixed GHGs, it is the Administrator's view that the reasons stated in the 2009 Endangerment Finding[141] for not including these substances in the scope of the GHG air pollution still apply at this time.

As the EPA acknowledged in the proposed findings,[142] some short-lived substances—namely water vapor, NO_X emitted at high altitude, and aerosol particles including black carbon—have physical properties that result in their having different, and often larger, climate effects when emitted at high altitudes. For example, the assessment literature indicates that aerosol particles, including black carbon, emitted at high altitudes have more interactions with clouds and therefore have different effects on the global energy balance than do particles emitted at the surface. However, the very properties that lead to differential climate effects depending on the altitude of emission—properties that are different from those of the six well-mixed GHGs—lead to more uncertainty in the scientific understanding of these short-lived substances' total effect on Earth's climate. The short-lived nature of these substances means that, unlike GHGs that are sufficiently long lived to become well mixed in the atmosphere, the climatic impact of the substance is dependent on a number of factors such as the location and time of its emission. The magnitude, and often the direction (positive/warming or negative/cooling), of the globally averaged climate impact will differ depending on the location of the emission due to the local atmospheric conditions (*e.g.,* due to differing concentrations of other compounds with which the emissions can react, background humidity levels, or the presence or absence of clouds). In addition, for emissions at any given location, the spatial and temporal pattern of the climate forcing will be heterogeneous, again often differing in direction (for example, in the case of NO_X emissions, the near-term effect in the hemisphere in which the emissions occur is usually warming due to increased ozone concentrations, but the longer term effects, and effects in the other hemisphere, are often cooling due to increased destruction of methane). More detail on the uncertainties relating to the climate effects of these short-lived substances is provided in the subsections below in response to public comments and in the Response to Comments document.

Overall, the state of the science as represented in the assessment literature at present continues to highlight significant scientific uncertainties regarding the total net forcing effect of water vapor, NO_X, and aerosol particles when emitted at high altitudes. The dependence of the effects on where the substance is emitted, and the complex temporal and spatial patterns that result, mean that the current level of understanding regarding these short-lived substances is much lower than for the six well-mixed GHGs. Given the aforementioned scientific uncertainties at present, the Agency is not including these constituents in the definition of air pollution for purposes of the endangerment finding under section 231(a)(2)(A) of the CAA.

Many public comments either supported or opposed inclusion of other substances in addition to the six well-mixed GHGs in the definition of air pollution, and some specifically suggested water vapor, NO_X, and aerosol particles as additional substances to include in that definition. The Agency's full responses to those comments can be found in the Response to Comments document; key comments and responses are summarized below.

a. Response to Key Comments on Including Other Climate Forcers in the Definition of Air Pollution

Some commenters argued that the proposed findings under CAA section 231(a)(2)(A) did not demonstrate careful examination of the scientific issues with regard to those short-lived substances that have different climate effects when emitted at high altitudes, and that a more thorough analysis should lead the EPA to conclude that water vapor, NO_X, and black carbon also drive climate change in addition to the six well-mixed GHGs. These comments stated that the EPA should have quantified and included the effect of high-altitude water vapor, NO_X, and black carbon in the Agency's discussion of drivers of climate change. Another commenter argued that the EPA should include metal particulates (specifically lead, barium, and aluminum) in the definition of air pollution for this finding because of their role in aviation-induced cloudiness, which the commenter argues has a larger effect on climate change than the six well-mixed GHGs.

Although the EPA is not at this time taking final action to determine whether these other climate forcers should be found to represent air pollution within the meaning of CAA section 231(a)(2)(A), the EPA disagrees with these comments suggesting that the Agency did not carefully examine the scientific issues and information supporting its current endangerment finding in regard to these substances. Consistent with the approach described in the proposed findings and for the reasons discussed above, the Administrator considers the major peer-reviewed scientific assessments of the IPCC and NRC as the primary scientific and technical basis informing the endangerment finding and providing the current state of scientific understanding of the differential climate effects that water vapor, NO_X, and aerosols such as black carbon have when emitted at high altitudes. The EPA has considered the following assessment reports to obtain the best estimates of these substances' net impact on the climate system, which is generally discussed in terms of radiative forcing: The IPCC AR5, the IPCC 2007 Fourth Assessment Report (AR4),[143] the IPCC Special Report: Aviation and the Global Atmosphere (IPCC 1999),[144] the NRC's Advancing the Science of Climate Change (NRC 2010),[145] and the NRC's Atmospheric Effects of Aviation: A Review of NASA's Subsonic Assessment Project (NRC 1999).[146] The USGCRP assessments have not dealt specifically with emissions at high altitude.

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[140] 74 FR at 66519–21 and 80 FR at 37781–84.

[141] 74 FR at 66519–21.

[142] 80 FR at 37781–84.

As described previously in section IV.A of this document, the Administrator's consideration of the major scientific assessments provides assurance that the Administrator is basing her judgment on the best available, well-vetted science that reflected the consensus of the climate science research community. These scientific assessments addressed the scientific issues that the EPA was required to examine, were comprehensive in their coverage of the GHG and climate change issues, and underwent rigorous and exacting peer review by the expert community, as well as rigorous levels of U.S. government review, in which the EPA took part. The commenters provide no compelling arguments against this approach, which underwent judicial review and was upheld as described in section IV.A of this document. The assessments synthesize literally thousands of individual studies to convey the consensus conclusions on what the body of scientific literature tells us, and the commenters did not provide evidence that we had missed or mischaracterized conclusions of the assessments regarding aviation impacts.

The state of the science as represented in the assessment literature supports the EPA's reasons for defining the air pollution as the aggregate group of the six well-mixed GHGs, which include their common physical properties relevant to climate change (*i.e.,* directly emitted and sufficiently long lived to become well mixed in the atmosphere), the fact that these gases are considered the primary drivers of climate change, and the fact that these gases remain the best understood drivers of anthropogenic climate change. Water vapor, NO_X, aerosol particles, or aviation-induced cloudiness associated with metal particulates do not share these common attributes, and are each associated with substantial scientific uncertainty. Accordingly, although the EPA is not making a final determination on whether these additional substances should be found to be air pollution within the meaning of CAA section 231(a)(2)(A), the EPA is not at this time changing or expanding the definition of the air pollution to include these additional substances. The following subsections provide additional discussion of the state of the science as represented in the assessment literature regarding the climatic effects of these substances when emitted at high altitudes.

b. Responses to Key Comments on Changes in Clouds From High Altitude Emissions of Water Vapor and Particles

Some commenters supported the EPA's summary of the scientific assessment literature and agreed that there are substantial scientific uncertainties regarding net climate effects of aviation-induced cloudiness from high altitude emissions of water vapor and particles. Other commenters disagreed and argued that there is clear scientific evidence that aviation-induced cloudiness associated with high altitude emissions of water vapor drives climate change and should be included in the definition of air pollution. One commenter disagrees and argues that, due to their effect on aviation-induced cloudiness and climate change, metal particulates should be included in the definition of air pollution.

The EPA disagrees with the comments regarding changing or expanding the definition of the air pollution employed in this endangerment finding to include these additional substances. For the reasons stated above, the Administrator considers the scientific assessment literature as the primary scientific and technical basis informing the endangerment finding and providing the state of climate science on aviation-induced cloudiness. Section IV.B.4 of the proposed findings under CAA section 231(a)(2)(A)[147] explained that aviation-induced cloudiness (sometimes called AIC) refers to all changes in cloudiness associated with aviation operations, which are primarily due to the effects of high altitude emissions of water vapor and particles (primarily sulfates and black carbon). Changes in cloudiness affect the climate by both reflecting solar radiation (cooling) and trapping outgoing longwave radiation (warming). Unlike the warming effects associated with GHGs that are sufficiently long lived to become well mixed in the atmosphere, the climate effects associated with changes in cloud cover are more regional and temporal in nature. The assessment literature describes three main components of aviation-induced cloudiness—persistent contrails, contrail-induced cirrus, and induced cirrus. Aircraft engine emissions of water vapor at high altitudes during flight can lead to the formation of condensation trails, or contrails, under certain conditions such as ice-supersaturated air masses with specific humidity levels and temperature.

The NRC estimated that persistent contrails increased cloudiness above the United States by two percent between 1950 and 1988, with similar results reported over Europe.[148] As stated above, clouds can have both warming and cooling effects, and persistent contrails were once considered to have significant net warming effects. However, more recent estimates suggest a smaller overall climate forcing effect of persistent contrails. The IPCC AR5 best estimate for the global mean radiative forcing from contrails is 0.01 W/m^2 (medium confidence and with an uncertainty range of 0.005 to 0.03 W/m^2).[149] To put both the magnitude and large uncertainty range of this number for the first of the three components of aviation-induced cloudiness into context, some examples of other IPCC AR5 best estimates for global mean radiative forcing include: 1.68 W/m^2 for CO_2 (very high confidence and with an uncertainty range of 1.33 to 2.03 W/m^2), 0.97 W/m^2 for methane (high confidence and with an uncertainty range of 0.74 to 1.20 W/m^2), and 0.17 W/m^2 for nitrous oxide (very high confidence and with an uncertainty range of .013 to 0.21 W/m^2).[150] In addition, the NRC (2010) assessment suggested that contrails may affect regional diurnal temperature differences, but this has been called into question by the recent findings presented in the IPCC AR5, which suggests that aviation contrails do not have an effect on mean or diurnal range of surface temperatures (medium confidence).

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[143] IPCC, 2007: *Climate Change 2007: The Physical Scientific Basis.* Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)] Cambridge University Press, 996 pp.

[144] IPCC, 1999: *Aviation and the Global Atmosphere,* Special Report to the Intergovernmental Panel on Climate Change [Penner, J.E., D.H. Lister, D.J. Griggs, D.J.Dokken, M.McFarland (eds.)] Cambridge University Press, 373 pp.

[145] NRC, 2010: *Advancing the Science of Climate Change.* The National Academies Press, 528 pp.

[146] NRC, 1999: *Atmospheric Effects of Aviation: A Review of NASA's Subsonic Assessment Project.* The National Academies Press, 54 pp.

[147] 80 FR at 37782–83.

[148] NRC, 1999: *Atmospheric Effects of Aviation: A Review of NASA's Subsonic Assessment Project.* The National Academies Press, 54 pp.

[149] IPCC, 2013: *Climate Change 2013: The Physical Science Basis.* Contribution of Working Group I to the Fifth Assessment Report of the

Persistent contrails also sometimes lose their linear form and develop into cirrus clouds, an effect referred to as contrail-induced cirrus. Studies to date have been unable to isolate this second of three main climate forcing components of aviation-induced cloudiness, but the IPCC AR5 provides a combined contrail and contrail-induced cirrus best estimate of 0.05 W/m^2 (low confidence and with an uncertainty range of 0.02 and 0.15 W/m^2).[151]

Particles emitted or formed in the atmosphere as a result of aircraft emissions (primarily sulfates and black carbon) may also act as ice nuclei and modify naturally forming cirrus clouds, an effect referred to as "induced cirrus." This third of three main climate forcing components of aviation-induced cloudiness is an area of active research, and there are significant challenges in estimating the climatic impacts of cirrus cloud modification. Neither IPCC AR4 nor AR5 provided global or regional estimates related to this forcing, with the AR5 stating that "it is deemed too uncertain to be further assessed here."[152] The 2007 IPCC AR4 characterizes our knowledge of the natural freezing modes in cirrus conditions as "poor" and notes that cirrus cloud processes are not well represented in global models.[153]

Given differences in scientific understanding of the three main components of aviation-induced cloudiness, the more recent assessments have not provided quantitative estimates of the overall net climate forcing effect of changes in clouds from high altitude emissions of water vapor and particles. Going back to the 1999 IPCC assessment's quantitative estimates, the science is characterized as "very uncertain" with a range for the best estimate between 0 to 0.040 W/m^2.[154] Thus, based on its consideration of the scientific evidence and all the comments on this issue, the EPA agrees with those commenters that indicate there are substantial scientific uncertainties regarding net effects of the three components of aviation-induced cloudiness on the climate system. These uncertainties result in the Agency's not being prepared at this time to determine whether these additional substances are air pollution within the meaning of CAA section 231(a)(2)(A) and not including them within the definition of "air pollution" being employed in this endangerment finding.

c. Responses to Key Comments on Direct Radiative Forcing Effects of High Altitude Particle Emissions

Some commenters supported the EPA's summary of the scientific uncertainties regarding the net direct radiative forcing effects of aviation-induced particles including black carbon. Other commenters disagreed and argued that there is clear scientific evidence that black carbon in particular drives climate change and should be included in the definition of air pollution.

The EPA disagrees with comments regarding changing or expanding the definition of the air pollution employed in this endangerment finding to include aviation-induced particles like black carbon. For the reasons stated above, the Administrator considers the scientific assessment literature as the primary scientific and technical basis informing the endangerment finding and providing the state of climate science regarding the direct radiative forcing effects of high altitude emissions of the two primary aviation-induced particles, sulfates and black carbon. Section IV.B.4 of the proposed findings under CAA section 231(a)(2)(A)[155] explained that aircraft emit precursor gases that convert to sulfate particles in the atmosphere, such as sulfur dioxide. Sulfate particles have direct effects on the climate by scattering solar radiation, which is a negative radiative forcing that ultimately results in cooling. The more recent assessments have not identified a quantitative best estimate for this negative radiative forcing effect specifically from aviation, as it is an active area of scientific study with large uncertainties. Going back to the 1999 IPCC assessment's quantitative estimates, the direct radiative forcing effect of sulfate aerosols from aviation for the year 1992 is estimated at −0.003 W/m^2 with an uncertainty range between −0.001 and −0.009 W/m^2.[156]

Similarly, the proposed findings under CAA section 231(a)(2)(A) explained that black carbon emissions from aviation, which are produced by the incomplete combustion of jet fuel, primarily absorb solar radiation and heat the surrounding air, resulting in a warming effect (positive radiative forcing). The more recent assessments have not identified a quantitative best estimate for this effect specifically from aviation, as it is an area of active scientific study with large uncertainties. Going back to the 1999 IPCC assessment's quantitative estimates, the global mean radiative forcing of black carbon emissions from aircraft is estimated to be 0.003 W/m^2 with uncertainty spanning 0.001 to 0.009 W/m^2.[157] The IPCC 1999 assessment suggests that because the contribution of black carbon in the stratosphere (which actually contributes to cooling of the Earth's surface rather than warming) was not included in its calculations, its estimates of radiative forcing were likely to be too high.

In addition, the 2009 Endangerment Finding did not include aerosols in the

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Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)].Cambridge University Press, 1535 pp.

[150] IPCC, 2013: *Summary for Policymakers. In: Climate Change 2013: The Physical Science Basis.* Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, 29 pp.

[151] IPCC, 2013: *Climate Change 2013: The Physical Science Basis.* Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)].Cambridge University Press, 1535 pp.

[152] Ibid.

[153] IPCC, 2007: *Climate Change 2007: The Physical Scientific Basis.* Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)] Cambridge University Press, 996 pp.

[154] IPCC, 1999: *Aviation and the Global Atmosphere,* Special Report to the Intergovernmental Panel on Climate Change [Penner, J.E., D.H. Lister, D.J. Griggs, D.J.Dokken, M.McFarland (eds.)] Cambridge University Press, 373 pp.

[155] 80 FR at 37783.

[156] IPCC, 1999: *Aviation and the Global Atmosphere,* Special Report to the Intergovernmental Panel on Climate Change [Penner, J.E., D.H. Lister, D.J. Griggs, D.J.Dokken, M.McFarland (eds.)] Cambridge University Press, 373 pp.

[157] Ibid.

definition of air pollution, noting that much of the uncertainty range surrounding the best estimate of total net forcing due to all human activities was due to uncertainties about the cooling and warming effects of aerosols[158] (though from all sources, not just aircraft). The 2009 Endangerment Finding also stated that the magnitude of aerosol effects can vary immensely with location and season of emissions, noting that estimates of its total climate forcing effect have a large uncertainty range.[159] Regarding black carbon specifically, the 2009 Endangerment Finding noted that it does not share common physical and chemical attributes with the six well-mixed GHGs because it is an aerosol particle (not a gas) that has different physical, chemical, and atmospheric properties. Black carbon affects the climate differently than GHGs that are sufficiently long lived to become well mixed in the atmosphere. In contrast to its indirect warming and cooling effects via clouds, black carbon causes a direct warming effect primarily by absorbing incoming and reflected sunlight (whereas GHGs that are sufficiently long lived to become well mixed in the atmosphere cause warming by trapping outgoing, infrared heat), and by darkening bright surfaces such as snow and ice, which reduces reflectivity. Black carbon is short-lived, remaining in the atmosphere for only about a week, and does not become well-mixed in the atmosphere. There are also concerns in the international climate science and policy communities about how to treat the short-lived black carbon emissions alongside GHGs—for example, what are the appropriate metrics to compare the warming and/or climate effects of the different substances, given that, unlike GHGs that are sufficiently long lived to become well mixed in the atmosphere, the magnitude of aerosol effects can vary immensely with location and season of emissions.

Thus, although the EPA is not at this time prepared to make a final determination on whether black carbon should be found to be air pollution within the meaning of CAA section 231(a)(2)(A), based on its consideration of the scientific evidence and all the comments on this issue, and consistent with its conclusion in the 2009 Endangerment Finding, the EPA disagrees with commenters that ask for black carbon to be included in the definition of the air pollution as part of this endangerment finding. Because aerosols such as black carbon and sulfates are fundamentally different from and do not share the relevant properties that support grouping the six well-mixed GHGs together as a class, and scientific uncertainties remain regarding the net radiative forcing effects of these substances (whether in general or when emitted at high altitudes), the EPA is not at this time including them in the definition of air pollution employed in this finding. However, because of these uncertainties the Agency is not at this time taking final action to determine whether these additional substances should be found to represent air pollution within the meaning of CAA section 231(a)(2)(A).

d. Responses to Key Comments on Changes in Atmospheric Chemistry From High Altitude Nitrogen Oxides Emissions

Most commenters supported the EPA's summary of the scientific uncertainties regarding the changes in atmospheric chemistry from high altitude NO_X emissions. At least one commenter disagreed and argued that there is clear scientific evidence that the effects of NO_X emissions on ozone production have a significant climate forcing effect. They concluded that NO_X should therefore be included in an endangerment finding.

The EPA disagrees with comments to the extent that they suggest including NO_X in this endangerment finding by changing or expanding the definition of the air pollution. NO_X emissions have different, and potentially larger, climate effects when emitted at high altitudes and about 90 percent of aircraft NO_X is emitted in flight (not during landing and takeoff),[160] meaning its relevance for climate change is primarily in relation to emissions at high altitude. The atmospheric lifetime of NO_X emitted near the surface is on the order of a few hours, while in the upper troposphere, or roughly the cruise altitude for jet aircraft, it is on the order of several days.

Section IV.B.4 of the proposed findings under CAA section 231(a)(2)(A)[161] explained that emissions of NO_X do not themselves have warming or cooling effects, but affect the climate through catalyzing changes in the chemical equilibrium of the atmosphere. High altitude emissions of NO_X increase the concentration of ozone, which has a warming effect in the short term. Elevated NO_X concentrations also lead to an increased rate of destruction of methane, which has a cooling effect in the long-term. The reduced methane concentrations eventually contribute to decreases in ozone, which also decreases the long-term net warming effect. Thus, the net radiative impact of NO_X emissions depends on the balance between the reductions in methane versus the production of ozone, which in turn depends on the time scale under consideration.

For the reasons stated above, the Administrator considers the scientific assessment literature as the primary scientific and technical basis informing the endangerment finding and providing the state of climate science regarding how emissions of NO_X affect the climate system. Quantifying these impacts is an area of active scientific study with large uncertainties. The quantification of the net global effect of NO_X is difficult because the atmospheric chemistry effects are heavily dependent on highly localized atmospheric properties and mixing ratios. Because the background atmospheric concentration of NO_X is important for quantifying the impact of NO_X emissions on ozone and methane concentrations, the location of aircraft emissions is an important additional factor. Going back to the IPCC 1999 assessment since no more recent quantitative estimates are available, the globally averaged radiative forcing estimates for high-altitude aircraft emissions of NO_X in 1992 were 0.023 W/m^2 for ozone-induced changes (uncertainty range of 0.011 to 0.046 W/m^2), and -0.014 W/m^2 for methane-induced changes (uncertainty range of -0.005 to -0.042 W/m^2).[162]

The IPCC AR5 presents the impact of aviation high-altitude NO_X emissions using a different metric, global warming potential (GWP), which is a measure of the warming impact of a pulse of emissions of a given substance over 100 years relative to the same mass of CO_2. The AR5 presents a range from -21 to $+75$ for GWP of aviation NO_X.[163] The uncertainty in sign indicates uncertainty whether the net effect is one of warming or cooling. This report further suggests that at cruise altitude there is strong regional sensitivity of ozone and methane to NO_X, particularly notable at low latitudes.

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[158] 74 FR at 66517.

[159] 74 FR at 66520.

[160] FAA, *System for Assessing Aviation's Global Emissions, Version 1.5, Global Aviation Emissions Inventories for 2000 through 2004,* FAA–EE–2005–02, September 2005, revised March 2008, available at *http://www.faa.gov/about/office_org/headquarters_offices/apl/researc/models/sage/* (Last accessed April 14, 2016).

[161] 80 FR at 37783–84.

[162] IPCC, 1999: *Aviation and the Global Atmosphere,* Special Report to the Intergovernmental Panel on Climate Change [Penner, J.E., D.H. Lister, D.J. Griggs, D.J. Dokken, M. McFarland (eds.)] Cambridge University Press, 373 pp.

[163] IPCC, 2013: *Climate Change 2013: The Physical Science Basis.* Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, 1535 pp.

Thus, although the EPA is not prepared to determine whether NO_X emissions at high altitude should be found to be air pollution within the meaning of CAA section 231(a)(2)(A), based on its consideration of the scientific evidence and all the comments on this issue, and consistent with its conclusion in the 2009 Endangerment Finding, the EPA disagrees with commenters that assert that NO_X should be included at this time in the definition of the air pollution for this finding. NO_X does not share the relevant properties that support grouping the six well-mixed GHGs together as a class. NO_X is not classified as a GHG because it influences the climate system indirectly through production of ozone rather than directly through trapping outgoing heat. In addition, NO_X does not have a sufficiently long atmospheric lifetime to become well-mixed in the atmosphere and significant scientific uncertainties remain regarding its net radiative forcing effects.

The Administrator notes that NO_X emissions are already regulated under the EPA's rules implementing CAA section 231, at 40 CFR part 87, due to their impacts during landing and take-off operations (LTO). The prerequisite endangerment and cause or contribute findings that formed the basis for these standards, however, did not rely upon any conclusions regarding the climate forcing impacts of NO_X, but rather the role of LTO NO_X emissions as a precursor to ozone formation in areas that did not meet the NAAQS for ozone.[164] The continuing significant uncertainties regarding high altitude NO_X emissions, which are emitted during cruise operations rather than during LTO, as a climate forcer do not undermine the Agency's prior conclusion under CAA section 231(a)(2)(A) that emissions of NO_X from aircraft engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare due to their contribution to ozone concentrations that exceed the NAAQS. This final finding does not revise or reopen the Agency's prior findings under CAA section 231(a)(2)(A) that emissions of NO_X from aircraft engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare due to their contribution to ozone concentrations that exceed the NAAQS.

C. The Air Pollution is Reasonably Anticipated To Endanger Both Public Health and Welfare

The Administrator finds that elevated atmospheric concentrations of the six well-mixed GHGs may reasonably be anticipated to endanger the public health and welfare of current and future generations within the meaning of CAA section 231(a)(2)(A). This section describes the major pieces of scientific evidence supporting the Administrator's endangerment finding, discusses both the public health and welfare aspects of the endangerment finding, and addresses a number of key issues the Administrator considered when evaluating the state of the science.

The EPA is informed by and places considerable weight on the extensive scientific and technical evidence in the record supporting the 2009 Endangerment Finding, including the major, peer-reviewed scientific assessments used to address the question of whether GHGs in the atmosphere endanger public health and welfare, and on the analytical framework and conclusions upon which the EPA relied in making that finding. This final finding under CAA section 231(a)(2)(A) accounts for the EPA's careful consideration of the scientific and technical record for the 2009 Endangerment Finding, of the new, major scientific assessments issued since closing the administrative record for the 2009 Endangerment Finding, and of public comments. No recent information or assessments published since late 2009 or provided by commenters suggest that it would be reasonable for the EPA to now reach a different or contrary conclusion for purposes of CAA section 231(a)(2)(A) than the one the EPA reached in 2009 under CAA section 202(a). Rather, they provide further support for this final finding under section 231(a)(2)(A). In particular, the new assessments discussed in this document provide additional detail regarding public health impacts, particularly on groups and people especially vulnerable to climate change, including children, the elderly, low-income communities and individuals, indigenous groups, and communities of color.

Following the same decision framework and analysis that we followed for the 2009 Endangerment Finding, as detailed in section IV.B of that finding,[165] here we summarize the general approach used by the Administrator in reaching the judgment that a positive endangerment finding should be made for purposes of CAA section 231(a)(2)(A), as well as the specific rationale for finding that the GHG air pollution may reasonably be anticipated to endanger both public health and welfare. First, the Administrator finds the scientific evidence linking anthropogenic emissions and resulting elevated atmospheric concentrations of the six well-mixed GHGs to observed global and regional temperature increases and other climate changes to be sufficiently robust and compelling. The Administrator is basing her finding on the total weight of scientific evidence and what the science has to say regarding the nature and potential magnitude of the risks and impacts across all climate-sensitive elements of public health and welfare, now and projected out into the foreseeable future. The Administrator has considered the state of the science on how anthropogenic emissions and the resulting elevated atmospheric concentrations of the six well-mixed GHGs may affect each of the major risk categories, include human health, air quality, food production and agriculture, forestry, water resources, sea level rise and coastal areas, the energy sector, infrastructure and settlements, and ecosystems and wildlife. The Administrator understands that the nature and potential severity of impacts can vary across these different elements of public health and welfare, and that they can vary by region, as well as over time.

The Administrator is therefore aware that, because human-induced climate change has the potential to be far-reaching and multi-dimensional, not all risks and potential impacts can be characterized with a uniform level of quantification or understanding, nor can they be characterized with uniform metrics. Thus, the Administrator is not necessarily placing the greatest weight on those risks and impacts which have been the subject of the most study or quantification. Rather, given this variety in not only the nature and potential magnitude of risks and impacts, but also in our ability to characterize, quantify and project into the future such impacts, the Administrator must use her judgment to weigh the threat in each of the risk categories, weigh the potential benefits where relevant, and ultimately to judge whether these risks and benefits, when viewed in total, endanger public health and/or welfare.

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[164] U.S. EPA, "Control of Air Pollution from Aircraft and Aircraft Engines, Emission Standards and Test Procedures for Aircraft." Final Rule, 38 FR 19088 (July 17, 1973).

[165] 74 FR at 66523–36.

First, the Administrator has not established a specific threshold metric for the different categories of risk and impacts, which are referred to as impact sectors. The potential for both adverse and beneficial effects is considered, as well as the relative magnitude of such effects, to the extent that the relative magnitudes can be quantified or characterized. Furthermore, given the multiple ways in which the buildup of anthropogenic GHG emissions in the atmosphere can cause effects (*e.g.,* via elevated CO_2 concentrations, temperature increases, precipitation increases, sea level rise, and changes in extreme events), these multiple pathways are considered. The Administrator has balanced and weighed the varying risks and effects for each impact sector. She has judged whether there is a pattern across the sector that supports or does not support an endangerment finding, and if so whether the support is of more or less weight. In cases where there is a potential for both benefits and risks of harm, the Administrator has balanced these factors by determining whether there appears to be any directional trend in the overall evidence that would support placing more weight on one than the other, taking into consideration all that is known about the likelihood of the various risks and effects and their seriousness. In all of these cases, the judgment is largely qualitative in nature and is not reducible to precise metrics or quantification.

Regarding the timeframe for the endangerment test, it is the Administrator's view that both current and future conditions must be considered. The Administrator is thus taking the view that the endangerment period of analysis extend from the current time to the next several decades and in some cases to the end of this century. This consideration is also consistent with the timeframes used in the underlying scientific assessments. The future timeframe under consideration is consistent with the atmospheric lifetime and climate effects of the six well-mixed GHGs and also with our ability to make reasonable and plausible projections of future conditions. The Administrator acknowledges that some aspects of climate change science and the projected impacts are more certain than others. Our state of knowledge is strongest for recently observed, large-scale changes. Uncertainty tends to increase in characterizing changes at smaller (regional) scales relative to large (global) scales. Uncertainty also increases as the temporal scales move away from the present, either backward or more importantly forward in time. Nonetheless, the current state of knowledge of observed and past climate changes and their causes enables projections of plausible future changes under different scenarios of anthropogenic forcing for a range of spatial and temporal scales. The subsections below summarize the scientific information on climate change impacts to public health and welfare that inform the Administrator's judgment, as well as the key public comments and Agency responses. The Agency's full responses to public comments can be found in the Response to Comments document.

1. The Air Pollution is Reasonably Anticipated To Endanger Public Health

The Administrator finds under CAA section 231(a)(2)(A) that the well-mixed GHG air pollution is reasonably anticipated to endanger public health, for both current and future generations. The Administrator finds that the public health of current generations is endangered and that the threat to public health for both current and future generations will mount over time as GHGs continue to accumulate in the atmosphere and result in ever greater rates of climate change. The Administrator continues to find robust scientific evidence in the assessment literature that climate change can increase the risk of morbidity and mortality and believes that these public health impacts can and should be considered when determining endangerment to public health under CAA section 231(a)(2)(A). As described in section IV.B.1 of the 2009 Endangerment Finding, the Administrator is not limited to only considering whether there are any direct health effects such as respiratory or toxic effects associated with exposure to GHGs.

Here we summarize information from the scientific assessment literature cited in the 2009 Endangerment Finding showing that climate change resulting from anthropogenic GHG emissions threatens multiple aspects of public health.[166] In determining that the well-mixed GHG air pollution is reasonably anticipated to endanger public health for current and future generations under CAA section 202(a), the Administrator noted her view that climate change can increase the risk of morbidity and mortality. In making that public health determination, the Administrator considered direct temperature effects, air quality effects, the potential for changes in vector-borne diseases, and the potential for changes in the severity and frequency of extreme weather events. In addition, the Administrator considered whether and how susceptible populations may be particularly at risk. As explained in more detail in the 2009 Endangerment Finding, with respect to direct temperature effects, by raising average temperatures, climate change increases the likelihood of heat waves, which are associated with increased deaths and illnesses. Climate change is also expected to lead to reductions in cold-related mortality. The 2009 Endangerment Finding, while noting uncertainty about how heat and cold related mortality would change in the future, also pointed to a USGCRP assessment report discussion that increases in heat-related mortality due to global warming in the United States were unlikely to be compensated for by decreases in cold-related mortality. With regard to air quality effects, climate change is expected to increase ozone pollution over broad areas of the country, including large metropolitan population centers, and thereby increase the risks of respiratory infection, aggravation of asthma, and premature death. Other public health threats stem from the potential for increased deaths, injuries, infectious and waterborne diseases, stress-related disorders, and other adverse effects associated with increased hurricane intensity and increased frequency of intense storms and heavy precipitation associated with climate change. In addition, climate change is expected to be associated with an increased risk of food-, water-, and vector-borne diseases in susceptible populations. Climate change also has the potential to change aeroallergen production (for example, through lengthening the growing season for allergen-producing plants), and subsequent human exposures could increase allergenic illnesses. Children, the elderly, and the poor are among the most vulnerable to climate-related health risks and impacts. The Administrator placed weight on the fact that these certain groups are most vulnerable to these climate-related health effects.

The EPA concludes that the 2009 Endangerment Finding's discussion under CAA section 202(a) is equally persuasive for purposes of CAA section 231(a)(2)(A). In addition, the EPA has carefully reviewed the key conclusions in the recent assessments regarding public health risks and the current and projected health impacts from human-induced climate change. The EPA finds that the new assessments are consistent with or strengthen the underlying science considered in the 2009 Endangerment Finding regarding public health effects from changes in temperature, air quality, extreme weather, and climate-sensitive diseases and aeroallergens, further supporting an endangerment finding under CAA section 231(a)(2)(A). These key findings are described briefly here.

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[166] 74 FR at 66524–30.

The USGCRP NCA3 finds that, "Climate change threatens human health and well-being in many ways, including impacts from increased extreme weather events, wildfire, decreased air quality, threats to mental health, and illnesses transmitted by food, water, and diseases carriers such as mosquitoes and ticks. Some of these health impacts are already underway in the United States." [167] Regarding temperature effects, the USGCRP NCA3 states, "The effects of temperature extremes on human health have been well documented for increased heat waves, which cause more deaths, hospital admissions and population vulnerability." [168] The conclusions of the assessment literature cited in the 2009 Endangerment Finding were uncertain with respect to the balance of future heat- versus cold-related mortality associated with climate change, but they noted that the available evidence suggested that the increased risk from heat would exceed the decreased risk from cold in a warming climate. The most recent assessments now have greater confidence that increases in heat-related mortality likely will be larger than the decreases in cold-related mortality, further supporting this endangerment finding under CAA section 231(a)(2)(A). The USGCRP NCA3 concludes, "While deaths and injuries related to extreme cold events are projected to decline due to climate change, these reductions are not expected to compensate for the increase in heat-related deaths." [169] The IPCC AR5 also notes a potential benefit of climate change could include "modest reductions in cold-related mortality and morbidity in some areas due to fewer cold extremes (low confidence)," [170] but that, "[o]verall, we conclude that the increase in heat-related mortality by mid-century will outweigh gains due to fewer cold periods." [171]

Regarding air quality effects, the assessment literature cited in the 2009 Endangerment Finding concluded that climate change is expected to increase regional ozone pollution, with associated risks in respiratory illnesses and premature death, but that the directional effect of climate change on ambient particulate matter levels was less certain. One of the more recent assessments, the USGCRP NCA3, similarly concludes, "Climate change is projected to harm human health by increasing ground-level ozone and/or particulate matter air pollution in some locations. . . . There is less certainty in the responses of airborne particles to climate change than there is about the response of ozone." [172] The IPCC AR5 finds that ozone and particulate matter have been associated with adverse health effects in many locations in North America, and that ozone concentrations could increase under future climate change scenarios if emissions of precursors were held constant. For particulate matter, both the USGCRP NCA3 and IPCC AR5 discuss increasing wildfire risk under climate change and explain that wildfire smoke exposure can lead to various respiratory and cardiovascular impacts. The USGCRP NCA3 states, "The effects of wildfire on human health have been well documented with increases in wildfire frequency, leading to decreased air quality and negative health impacts." [173] The NRC Indoor Environment assessment identifies potential adverse health risks associated with climate change-induced alterations in the indoor environment, including possible exposure to air pollutants due to changes in outdoor air quality. Other risks include potential for alterations in indoor allergens due to climate change-related increases in outdoor pollen levels, potential chemical exposures due to greater use of pesticides to address changes in geographic ranges of pest species, and dampness/mold associated symptoms and illness due to potential flooding and water damage in buildings from projected climate change-related increases in storm intensity and extreme precipitation events in some regions of the United States. Each of these assessments further supports finding endangerment under CAA section 231(a)(2)(A).

Regarding extreme weather events (*e.g.,* storms, heavy precipitation, and, in some regions of the United States, floods and droughts), the conclusions of the assessment literature cited in the 2009 Endangerment Finding found potential for increased deaths, injuries, infectious and waterborne diseases, and stress-related disorders. The more recent assessments further support this conclusion for purposes of CAA section 231(a)(2)(A). The USGCRP NCA3 finds that "Heavy downpours are increasing nationally, especially over the last three to five decades. Largest increases are in the Midwest and Northeast. Increases in the frequency and intensity of extreme precipitation events are projected for all U.S. regions." [174] The USGCRP NCA3 identifies that: "Elevated waterborne disease outbreaks have been reported in the weeks following heavy rainfall, although other variables may affect these associations. Water intrusion into buildings can result in mold contamination that manifests later, leading to indoor air quality problems." [175] Other risks include mortality associated with flooding and impacts on mental health, such as anxiety and post-traumatic stress disorder. The IPCC AR5 also discusses increased risk of death and injury in coastal zones and regions vulnerable to inland flooding. The USGCRP NCA3 and the IPCC AR5 both find that climate change may increase exposure to health risks associated with drought conditions, which includes impacts from wildfires, dust storms, extreme heat events, and flash flooding. Droughts can lead to reduced water quantity and degraded water quality, thereby increasing the risk of water-related diseases. The IPCC SREX assessment projects further increases in some extreme weather and climate events during this century, and it specifically notes that changes in extreme weather events have implications for disaster risk in the health sector.

The potential for changes in climate-sensitive diseases was also cited in the 2009 Endangerment Finding. This included an increase in the spread of several food and water-borne pathogens, which can affect susceptible populations. Also noted was the potential for range expansion of some zoonotic disease carriers such as the Lyme disease-carrying tick. The new assessment literature similarly focuses on increased exposure risk for some diseases under climate change, finding that increasing temperatures may expand or shift the ranges of some disease vectors like mosquitoes, ticks, and rodents. The IPCC AR5 notes that climate change may influence the "growth, survival, persistence, transmission, or virulence of pathogens" [176] that cause food and water-borne disease. The USGCRP NCA3 notes that uncertainty remains regarding future projections of increased human burden of vector-borne disease, given complex interacting factors such as "local, small-scale differences in weather, human modification of the landscape, the diversity of animal hosts, and human behavior that affects vector-human contact, among other factors." [177] This new assessment literature further supports finding endangerment under CAA section 231(a)(2)(A).

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[167] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 221.

[168] Ibid at p. 252.

[169] Ibid at p. 224.

[170] IPCC, 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects.* Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, p. 713.

[171] Ibid. at p. 721.

[172] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 222.

[173] Ibid at p. 252.

[174] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 36.

[175] Ibid at p. 224–225.

Regarding aeroallergens, the assessment literature cited in the 2009 Endangerment Finding found potential for climate change to affect the prevalence and severity of allergy symptoms, but definitive data or conclusions were lacking on how climate change might impact aeroallergens in the United States. Further supporting an endangerment finding under CAA section 231(a)(2)(A), the most recent assessments now express greater confidence that climate change influences the production of pollen, which in turn could affect the incidence of asthma and other allergic respiratory illnesses such as allergic rhinitis, as well as effects on conjunctivitis and dermatitis. Both the USGCRP NCA3 and the IPCC AR5 found that increasing temperature has lengthened the allergenic pollen season for ragweed, and that increased CO_2 by itself can elevate production of plant-based allergens. The IPCC AR5 concludes that in North America, there is high confidence that "warming will lead to further changes in the seasonal timing of pollen release." [178]

a. Health Impacts of Climate Change on Vulnerable Populations

In the 2009 Endangerment Finding, the EPA cited the assessment literature's conclusions regarding the fact that certain populations, including children, the elderly, and the poor, are most vulnerable to climate change-related health effects. The 2009 Endangerment Finding also described climate change impacts facing indigenous peoples in the United States, particularly Alaska Natives. The new assessment literature strengthens these conclusions and further supports an endangerment finding under CAA section 231(a)(2)(A) by providing more detailed findings regarding these populations' vulnerabilities and the projected impacts they may experience. In addition, the most recent assessment reports provide new analysis about how some populations defined jointly by ethnic/racial characteristics and geographic location may be vulnerable to certain climate change health impacts. The following paragraphs summarize information from the most recent assessment reports on these vulnerable populations.

The USGCRP NCA3 finds, "Climate change will, absent other changes, amplify some of the existing health threats the nation now faces. Certain people and communities are especially vulnerable, including children, the elderly, the sick, the poor, and some communities of color." [179] Limited resources make low-income populations more vulnerable to ongoing climate-related threats, less able to adapt to anticipated changes, and less able to recover from climate change impacts. Low-income populations also face higher prevalence of chronic health conditions than higher income groups, which increases their vulnerability to the health effects of climate change.

According to the USGCRP NCA3 and IPCC AR5, some populations defined jointly by ethnic/racial characteristics and geographic location are more vulnerable to certain health effects of climate change due to factors such as existing health disparities (*e.g.,* higher prevalence of chronic health conditions), increased exposure to health stresses, and social factors that affect local resilience and ability to recover from impacts.

The USGCRP NCA3 also finds that climate change, in addition to chronic stresses such as extreme poverty, is affecting indigenous peoples' health in the United States through impacts such as reduced access to traditional foods, decreased water quality, and increasing exposure to health and safety hazards. The IPCC AR5 finds that climate change-induced warming in the Arctic and resultant changes in environment (*e.g.,* permafrost thaw, effects on traditional food sources) have significant observed and projected impacts on the health and well-being of Arctic residents, especially indigenous peoples. Small, remote, predominantly indigenous communities are especially vulnerable given their "strong dependence on the environment for food, culture, and way of life; their political and economic marginalization; existing social, health, and poverty disparities; as well as their frequent close proximity to exposed locations along ocean, lake, or river shorelines." [180] In addition, increasing temperatures and loss of Arctic sea ice increases the risk of drowning for those engaged in traditional hunting and fishing.

The USGCRP NCA3 concludes that "Children, primarily because of physiological and developmental factors, will disproportionately suffer from the effects of heat waves, air pollution, infectious illness, and trauma resulting from extreme weather events." [181] As noted above, the IPCC AR5 finds that in North America, climate change will influence production of pollen, and that this affects asthma and other allergic respiratory diseases to which children are among those especially susceptible.

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[176] IPCC, 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects.* Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, p. 726.

[177] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 225.

[178] IPCC, 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects.* Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Barros, V.R., C.B. Field, D.J. Dokken, M.D. Mastrandrea, K.J. Mach, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, Cambridge, pp. 1465–1466.

[179] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 221.

[180] IPCC, 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects.* Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Barros, V.R., C.B. Field, D.J. Dokken, M.D. Mastrandrea, K.J. Mach, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, Cambridge, p. 1581.

[181] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p.228.

The IPCC AR5 also identifies children as a susceptible population to health effects associated with heat waves, storms, and floods.

Both the USGCRP and IPCC conclude that climate change increases health risks facing the elderly. Older people are at much higher risk of mortality during extreme heat events. Pre-existing health conditions also make older adults susceptible to cardiac and respiratory impacts of air pollution and to more severe consequences from infectious and waterborne diseases. Limited mobility among older adults can also increase health risks associated with extreme weather and floods.

Accordingly, as discussed above, all of these recent assessments further support finding endangerment under CAA section 231(a)(2)(A).

b. Responses to Key Comments on Endangerment to Public Health

Public comments supported the EPA's summary of the scientific information and finding that the well-mixed GHG air pollution is reasonably anticipated to endanger public health of current and future generations under CAA section 231(a)(2)(A). Commenters cited a number of examples of climate impacts relevant to public health including changes in outdoor and indoor air quality, extreme temperatures, floods, fires, and hurricanes. Some commenters also agreed with the EPA's summary of health impacts to certain vulnerable populations and emphasized that certain populations like the elderly, poor, very young, and indigenous groups are more vulnerable to the health impacts of climate change for various reasons. No commenters disagreed with the EPA's summary of the scientific information or with its conclusion on endangerment to public health. The EPA agrees with the commenters that this endangerment finding is well supported by the scientific assessment literature; that it covers a range of health risks associated with climate change-induced changes in air quality, increases in temperatures, changes in extreme weather events, increases in food and water borne pathogens, and changes in aeroallergens; and that certain populations are more vulnerable to climate change health risks and impacts.

2. The Air Pollution Is Reasonably Anticipated To Endanger Welfare

The Administrator finds under CAA section 231(a)(2)(A) that the air pollution comprised of the six well-mixed GHGs is reasonably anticipated to endanger welfare, for both current and future generations. As with public health, the Administrator considered the multiple pathways in which the GHG air pollution and resultant climate change affect climate-sensitive sectors and the impact this may have on welfare. These sectors include food production and agriculture; forestry; water resources; sea level rise and coastal areas; energy, infrastructure, and settlements; and ecosystems and wildlife. The Administrator examined each climate-sensitive sector individually, informed by the scientific information in the major assessments contained in the administrative record for the 2009 Endangerment Finding as well as the newer assessments in the record for this action, and weighed the extent to which the risks and impacts within each sector support or do not support a positive endangerment finding in her judgment. The Administrator then viewed the full weight of evidence looking across all sectors to reach her decision regarding endangerment to welfare. For each of these sectors, the evidence indicates that the risk and the severity of adverse impacts on welfare are expected to increase over time, providing compelling support for a finding of endangerment to welfare. The Administrator also considered impacts on the U.S. population from climate change effects occurring outside of the United States, such as national security concerns for the United States that may arise as a result of climate change impacts in other regions of the world, and finds that this provides additional support to the finding of endangerment to welfare of current and future generations of the United States population.

The 2009 Endangerment Finding summarized information from the scientific assessment literature showing that climate change resulting from anthropogenic GHG emissions also threatens multiple aspects of welfare under CAA section 202(a).[182] In determining that the well-mixed GHG air pollution is reasonably anticipated to endanger welfare for current and future generations, the Administrator considered the multiple pathways by which GHG air pollution and resultant climate change affect welfare by evaluating the numerous and far-ranging risks and impacts associated with food production and agriculture; forestry; water resources; widespread snow and ice melt, sea level rise and coastal areas; energy, infrastructure, and settlements; and ocean acidification, ecosystems, and wildlife. The Administrator also considered observed and projected risks and impacts on the U.S. population from climate change effects occurring outside of the United States. As explained in more detail in the 2009 Endangerment Finding, the potential serious adverse impacts of extreme events, such as wildfires, flooding, drought, and extreme weather conditions provided strong support for the determination. Water resources across large areas of the country are at serious risk from climate change, with effects on water supplies, water quality, and adverse effects from extreme events such as floods and droughts. The severity of risks and impacts is likely to increase over time with accumulating GHG concentrations and associated temperature increases and precipitation changes. Coastal areas are expected to face increased risks from storm and flooding damage to property, as well as adverse impacts from rising sea level such as land loss due to inundation, erosion, wetland submergence and habitat loss. Climate change is expected to result in an increase in electricity production for peak electricity demand, and extreme weather from climate change threatens energy, transportation, and water resource infrastructure. Climate change may exacerbate existing environmental pressures in certain settlements. In Alaska, indigenous communities are likely to experience disruptive impacts. Climate change is also very likely to fundamentally change U.S. ecosystems over the 21st century and to lead to predominantly negative consequences for biodiversity, ecosystem goods and services, and wildlife. Though there may be some benefits for agriculture and forestry in the next few decades, the body of evidence points towards increasing risks of net adverse impacts on U.S. food production, agriculture and forest productivity as average temperature continues to rise. Looking across all sectors discussed above, the risk and the severity of adverse impacts on welfare are expected to increase over time. Lastly, these impacts are global and may exacerbate problems outside the United States that raise humanitarian, trade, and national security issues for the United States.

The Administrator concludes that the discussion in the 2009 Endangerment Finding under CAA section 202(a) is equally compelling to support an endangerment finding under CAA section 231(a)(2)(A). In addition, the EPA has carefully reviewed the recent scientific conclusions in the assessments regarding human-induced climate change impacts on welfare.[183] The EPA finds that they further support finding endangerment under CAA section 231(a)(2)(A), as they are largely consistent with or strengthen the underlying science supporting the 2009 Endangerment Finding regarding observed and projected climate change risks and impacts to food production and agriculture; forestry; water resources; widespread snow and ice melt, sea level rise, and coastal areas; energy, infrastructure, and settlements; ocean acidification, ecosystems, and wildlife; and impacts on the U.S. population from climate change effects occurring outside of the United States. These key findings are described briefly here.

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[182] 74 FR at 66530–36.

Regarding agriculture, the assessment literature cited in the 2009 Endangerment Finding found potential for increased CO_2 levels to benefit yields of certain crops in the short term, but with considerable uncertainty. The body of evidence pointed towards increasing risk of net adverse impacts on U.S. food production and agriculture over time, with the potential for significant disruptions and crop failure in the future. The most recent assessments now have greater confidence that climate change will negatively affect U.S. agriculture over this century, and support finding endangerment under CAA section 231(a)(2)(A). Specifically, the USGCRP NCA3 concludes, "While some U.S. regions and some types of agricultural production will be relatively resilient to climate change over the next 25 years or so, others will increasingly suffer from stresses due to extreme heat, drought, disease, and heavy downpours. From mid-century on, climate change is projected to have more negative impacts on crops and livestock across the country."[184] The IPCC AR5 concludes, "Overall yields of major crops in North America are projected to decline modestly by mid-century and more steeply by 2100 among studies that do not consider adaptation (very high confidence)."[185] The IPCC AR5 notes that in the absence of extreme events, climate change may benefit certain regions and crops, but that in North America significant harvest losses have been observed due to recent extreme weather events. In addition, the IPCC SREX assessment specifically notes that projected changes in extreme weather events will increase disaster risk in the agriculture sector.

Regarding forestry, the assessment literature cited in the 2009 Endangerment Finding found that near-term benefits to forest growth and productivity in certain parts of the country from elevated CO_2 concentrations and temperature increases to date are offset by longer-term risks from wildfires and the spread of destructive pests and disease that present serious adverse risks for forest productivity. The most recent assessments provide further support for finding endangerment under CAA section 231(a)(2)(A). Both the USGCRP NCA3 and the IPCC AR5 conclude that climate change is increasing risks to forest health from fire, tree disease and insect infestations, and drought. The IPCC AR5 also notes risks to forested ecosystems associated with changes in temperature, precipitation amount, and CO_2 concentrations, which can affect species and ecological communities, leading to ecosystem disruption, reorganization, movement or loss. The NRC Arctic assessment states that climate change is likely to have a large negative impact on forested ecosystems in the high northern latitudes due to the effects of permafrost thaw and greater wildfire frequency, extent, and severity. The NRC Climate Stabilization Targets assessment found that for an increase in global average temperature of 1 to 2 °C above pre-industrial levels, the area burnt by wildfires in western North America will likely more than double.

Regarding water resources, the assessment literature cited in the 2009 Endangerment Finding concluded that increasing temperatures and increased variability in precipitation associated with climate change is expected to have adverse impacts on water quality and is likely to further constrain water quantity through changes in snowpack, increased risk of floods, drought, and other concerns such as water pollution. Similarly, the new assessments further support projections of water resource impacts associated with increased floods and short-term drought in most U.S. regions, and therefore support an endangerment finding under CAA section 231(a)(2)(A). The USGCRP NCA3 also finds that, "[c]limate change is expected to affect water demand, groundwater withdrawals, and aquifer recharge, reducing groundwater availability in some areas."[186] The IPCC AR5 finds that in part of the western United States, "water supplies are projected to be further stressed by climate change, resulting in less water availability and increased drought conditions."[187] The IPCC AR5 states, "Throughout the eastern USA, water supply systems will be negatively impacted by lost snowpack storage, rising sea levels contributing to increased storm intensities and saltwater intrusion, possibly lower streamflows, land use and population changes, and other stresses."[188] The IPCC AR5 also synthesizes recent studies that project a range of adverse climate impacts in North America to surface water quality (including to the Great Lakes), drinking water treatment/distribution, and sewage collection systems.

The assessment literature cited in the 2009 Endangerment Finding found that the most serious potential adverse effects to coastal areas are the increased risk of storm surge and flooding in coastal areas from current and projected rates of sea level rise and more intense storms. Coastal areas also face other adverse impacts from sea level rise such as land loss due to inundation, erosion, wetland submergence, and habitat loss. The most recent assessments provide further evidence in line with the science supporting the 2009 Endangerment Finding, and support finding endangerment under CAA section 231(a)(2)(A). The USGCRP NCA3 finds, "Sea level rise, combined with coastal storms, has increased the risk of erosion, storm surge damage, and flooding for coastal communities, especially along the Gulf Coast, the Atlantic seaboard, and in Alaska." [189]

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[183] The CAA states that "[a]ll language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants." CAA section 302(h). This language is quite broad. Importantly, it is not an exclusive list due to the use of the term "includes, but is not limited to . . ." Effects other than those listed here may also be considered effects on welfare.

[184] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment*. U.S. Global Change Research Program, p. 16.

[185] IPCC, 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects*. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Barros, V.R., C.B. Field, D.J. Dokken, M.D. Mastrandrea, K.J. Mach, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, Cambridge, p. 1462.

[186] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment*. U.S. Global Change Research Program, p. 70.

[187] IPCC, 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects*. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Barros, V.R., C.B. Field, D.J. Dokken, M.D. Mastrandrea, K.J. Mach, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, Cambridge, pp. 1456–1457.

[188] Ibid at p. 1457.

The IPCC AR5 found that global sea levels rose 0.19 m (7.5 inches) from 1901 to 2010. Contributing to this rise was the warming of the oceans and melting of land ice from glaciers and ice sheets. It is likely that 275 gigatons per year of ice melted from land glaciers (not including ice sheets) from 1993–2009, and that the rate of loss of ice from the Greenland and Antarctic ice sheets increased substantially in recent years, to 215 gigatons per year and 147 gigatons per year respectively from 2002–2011. For context, 360 gigatons of ice melt is sufficient to cause global sea levels to rise one millimeter.

The IPCC AR5, the USGCRP NCA3, and three of the new NRC assessments provide estimates of projected global average sea level rise. These estimates, while not always directly comparable as they assume different emissions scenarios and baselines, are at least 40 percent larger than, and in some cases more than twice as large as, the projected rise estimated in the IPCC AR4 assessment, which was referred to in the 2009 Endangerment Finding.[190] The NRC Sea Level Rise assessment projects a global average sea level rise of 0.5 to 1.4 meters by 2100. Change of this magnitude would be sufficient to lead to a relative rise in sea level even around the northern coasts of Washington State, where the land is still rebounding from the disappearance of the great ice sheets.[191] The NRC National Security Implications assessment suggests that "the Department of the Navy should expect roughly 0.4 to 2 meters global average sea-level rise by 2100." [192] The NRC Climate Stabilization Targets assessment states that a global average temperature increase of 3 °C will lead to a global average sea level rise of 0.5 to 1 meter by 2100. While these NRC and IPCC assessments continue to recognize and characterize the uncertainty inherent in accounting for melting ice sheets in sea level rise projections, these revised estimates are consistent with the assessments underlying the 2009 Endangerment Finding, and support finding endangerment under CAA section 231(a)(2)(A).

Regarding climate impacts on energy, infrastructure and settlements, the 2009 Endangerment Finding cited the assessment literature's findings that temperature increases will change heating and cooling demand; that declining water quantity may adversely impact the availability of cooling water and hydropower in the energy sector; and that changes in extreme weather events will threaten energy, transportation, water, and other key societal infrastructure, particularly on the coast. The most recent assessments provide further evidence in line with the science supporting the 2009 Endangerment Finding, to support finding endangerment under CAA section 231(a)(2)(A). For example, the USGCRP NCA3 finds, "Coastal infrastructure, including roads, rail lines, energy infrastructure, airports, port facilities, and military bases, are increasingly at risk from sea level rise and damaging storm surges." [193] The NRC Arctic assessment identifies threats to human infrastructure in the Arctic from increased flooding, erosion, and shoreline ice pile-up, or *ivu,* associated with summer sea ice loss and the increasing frequency and severity of storms.

Regarding ecosystems and wildlife, the assessment literature cited in the 2009 Endangerment Finding discussed a number of impacts. These include a high confidence finding that substantial changes in the structure and functioning of terrestrial ecosystems are very likely to occur with a global warming greater than 2 to 3 °C above pre-industrial levels, with predominantly negative consequences for biodiversity and the provisioning of ecosystem goods and services. In addition, climate change and ocean acidification will likely impair a wide range of planktonic and other marine calcifiers such as corals. The recent assessments published since 2009 provide additional support for finding endangerment under CAA section 231(a)(2)(A). The USGCRP NCA3 concluded that "The oceans are currently absorbing about a quarter of the carbon dioxide emitted to the atmosphere annually and are becoming more acidic as a result, leading to concerns about intensifying impacts on marine ecosystems . . . Over the last 250 years, the oceans have absorbed 560 billion tons of CO2, increasing the acidity of surface waters by 30%. Although the average oceanic pH can vary on interglacial timescales, the current observed rate of change is roughly 50 times faster than known historical change." [194]

The NRC Arctic assessment states that major marine and terrestrial biomes will likely shift poleward, with significant implications for changing species composition, food web structures, and ecosystem function. The NRC Climate Stabilization Targets assessment found that coral bleaching events will likely increase in frequency and severity due warming sea surface temperatures and that ocean acidification will likely reduce coral shell and skeleton growth and increase erosion of coral reefs. The NRC Understanding Earth's Deep Past assessment notes four of the five major coral reef crises of the past 500 million years were caused by GHG-induced ocean acidification and warming that followed releases of GHGs of similar magnitude to the emissions increases expected over the next hundred years. Similarly, the NRC Ocean Acidification assessment finds that "[t]he chemistry of the ocean is changing at an unprecedented rate and magnitude due to anthropogenic CO_2 emissions; the rate of change exceeds any known to have occurred for at least the past hundreds of thousands of years." [195] The assessment notes that the full range of consequences is still unknown, but the risks "threaten coral reefs, fisheries, protected species, and other natural resources of value to society." [196] The IPCC AR5 also projects biodiversity losses in marine ecosystems, especially in the Arctic and tropics.

The IPCC AR5 found that annual mean Arctic sea ice has been declining at 3.5 to 4.1 percent per decade, and Northern Hemisphere snow cover extent has decreased at about 1.6 percent per decade for March and 11.7 percent per decade for June. The USGCRP NCA3 finds that "rising temperatures across the U.S. have reduced lake ice, sea ice, glaciers, and seasonal snow cover over the last few decades." [197] These changes

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[189] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 9.

[190] The 2007 IPCC AR4 assessment cited in 2009 Endangerment Finding estimated a projected sea level rise of between 0.18 and 0.59 meters by the end of the century, relative to 1990. It should be noted that in 2007, the IPCC stated that including poorly understood ice sheet processes could lead to an increase in the projections.

[191] Sea level does not rise uniformly due to changes in winds, temperature patterns, land uplift or subsidence, and other factors. Therefore, relative sea level rise along any given point on the coast can vary from the global average.

[192] NRC, 2011: *National Security Implications of Climate Change for U.S. Naval Forces.* The National Academies Press, p. 28.

[193] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 9.

[194] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 48.

[195] NRC, 2010: *Ocean Acidification: A National Strategy to Meet the Challenges of a Changing Ocean.* The National Academies Press, p. 5.

[196] Ibid.

[197] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts*

Continued

are projected to continue, threatening seasonal water availability and ecosystems reliant on ice and snow cover.

a. Welfare Impacts of Climate Change on Vulnerable Populations

In general, climate change impacts related to welfare are expected to be unevenly distributed across different regions of the United States and are expected to have a greater impact on certain populations, such as indigenous peoples and the poor. The USGCRP NCA3 finds climate change impacts such as the rapid pace of temperature rise, coastal erosion and inundation related to sea level rise and storms, ice and snow melt, and permafrost thaw are affecting indigenous people in the United States. Particularly in Alaska, critical infrastructure and traditional livelihoods are threatened by climate change, and "[i]n parts of Alaska, Louisiana, the Pacific Islands, and other coastal locations, climate change impacts (through erosion and inundation) are so severe that some communities are already relocating from historical homelands to which their traditions and cultural identities are tied." [198] The IPCC AR5 notes, "Climate-related hazards exacerbate other stressors, often with negative outcomes for livelihoods, especially for people living in poverty (high confidence). Climate-related hazards affect poor people's lives directly through impacts on livelihoods, reductions in crop yields, or destruction of homes and indirectly through, for example, increased food prices and food insecurity." [199]

b. Other Considerations Regarding Endangerment to Welfare

In the 2009 Endangerment Finding, the Administrator considered impacts on the U.S. population from climate change effects occurring outside of the United States, such as national security concerns that may arise as a result of climate change impacts in other regions of the world. The most recent assessments provide further evidence in line with the science supporting the 2009 Endangerment Finding, and further support finding endangerment under CAA section 231(a)(2)(A). The NRC Climate and Social Stress assessment found that it would be "prudent for security analysts to expect climate surprises in the coming decade . . . and for them to become progressively more serious and more frequent thereafter." [200] The NRC National Security Implications assessment recommends preparing for increased needs for humanitarian aid; responding to the effects of climate change in geopolitical hotspots, including possible mass migrations; and addressing changing security needs in the Arctic as sea ice retreats.

In addition, the NRC Abrupt Impacts report examines the potential for tipping points, thresholds beyond which major and rapid changes occur in the Earth's climate system, as well as in natural and human systems that are impacted by the changing climate. The Abrupt Impacts report did find less cause for concern than some previous assessments regarding some abrupt events within the next century, such as disruption of the oceanic Atlantic Meridional Overturning Circulation (AMOC) and sudden releases of high-latitude methane from hydrates and permafrost. But, the same report found that the potential for abrupt changes in ecosystems, weather and climate extremes, and groundwater supplies critical for agriculture now seem more likely, severe, and imminent. The assessment found that some abrupt changes were already underway (*e.g.,* Arctic sea ice retreat and increases in extinction risk due to the speed of climate change), and cautioned that even abrupt changes such disruption to the AMOC that are not expected in this century can have severe impacts if/when they happen, such as interference with the global transport of oceanic heat, salt, and carbon.

c. Responses to Key Comments on Endangerment to Welfare

Public comments supported the EPA's summary of the scientific information and finding that the well-mixed GHG air pollution is reasonably anticipated to endanger welfare under CAA section 231(a)(2)(A). Commenters cited a number of examples of climate impacts relevant to welfare including sea level rise and coastal erosion, species range changes and extinctions, and reduced water availability due to changes in snowpack and timing of snow melt. Some commenters also agreed with the EPA's summary of welfare impacts to certain vulnerable populations and emphasized that certain populations are more vulnerable to the welfare impacts of climate change, in particular tribes and indigenous groups. No commenters disagreed with the EPA's summary of the scientific information or with its conclusion on endangerment to welfare. The EPA agrees with the commenters that this finding of endangerment to welfare under CAA section 231(a)(2)(A) is well supported by the scientific assessment literature; that it covers a range of risks associated with climate change threats to food production and agriculture, forestry, water resources, sea level rise and coastal areas, energy, infrastructure, and settlements, and ecosystems and wildlife; and that certain populations are more vulnerable to climate change welfare risks and impacts.

D. Summary of the Administrator's Endangerment Finding Under CAA Section 231

In sum, the Administrator finds, for purposes of CAA section 231(a)(2)(A), that elevated atmospheric concentrations of the six well-mixed GHGs constitute air pollution that endangers both public health and welfare of current and future generations. In this final action under CAA section 231(a)(2)(A), the EPA is informed by and places considerable weight on the extensive scientific and technical evidence in the record supporting the 2009 Endangerment Finding under CAA section 202(a), including the major, peer-reviewed scientific assessments used to address the question of whether GHGs in the atmosphere endanger public health and welfare, and on the analytical framework and conclusions upon which the EPA relied in making that finding. This final finding under section 231(a)(2)(A) accounts for the EPA's careful consideration of the scientific and technical record for the 2009 Endangerment Finding, and of the new, major scientific assessments issued since closing the administrative record for the 2009 Endangerment Finding, and consideration of public comments. No recent information or assessments published since late 2009 suggest that it would be reasonable for the EPA to now reach a different or contrary conclusion for purposes of CAA section 231(a)(2)(A) than the Agency reached for purposes of section 202(a); instead, the new, major scientific assessments

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in the United States: The Third National Climate Assessment. U.S. Global Change Research Program, p. 46.

[198] Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment.* U.S. Global Change Research Program, p. 17.

[199] IPCC, 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects.* Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, p. 796.

[200] NRC, 2013: *Climate and Social Stress: Implications for Security Analysis.* The National Academies Press, p. 18.

further support finding endangerment under CAA section 231(a)(2)(A). In making this finding for purposes of section 231(a)(2)(A), we are not reopening or revisiting the 2009 Endangerment Finding under CAA section 202(a). To the contrary, in light of the recent judicial decisions upholding that finding, the EPA believes the 2009 Endangerment Finding is firmly established and well settled.[201] Moreover, there is no need for the EPA to reopen or revisit that finding for purposes of CAA section 202(a) in order for the Administrator to rely on its analyses and conclusions, supported by more recent studies, in support of making an additional endangerment finding under section 231(a)(2)(A) of the CAA. Today's final endangerment finding, although significantly informed by the scientific information and the EPA's prior discussion of that information in the 2009 Endangerment Finding, is solely for purposes of CAA section 231(a)(2)(A).

V. The Administrator's Cause or Contribute Finding for Greenhouse Gases Emitted by Certain Classes of Engines Used by Covered Aircraft Under CAA Section 231

As noted above, the Administrator defines the air pollution for purposes of the endangerment finding under CAA section 231(a)(2)(A) to be the aggregate of six well-mixed GHGs in the atmosphere, and finds that such air pollution endangers public health and welfare of current and future generations. The second step of the two-part endangerment test for this finding is for the Administrator to determine whether the emission of any air pollutant from certain classes of aircraft engines used by certain aircraft causes or contributes to this endangering air pollution. This is referred to as the cause or contribute finding, and is the second finding by the Administrator in this action under CAA section 231(a)(2)(A).

Section V.A of this document describes the Administrator's reasoning for using under CAA section 231(a)(2) the same definition and scope of the GHG air pollutant that was used in the 2009 Endangerment Finding under CAA section 202(a). Section V.B puts forth the Administrator's finding that emissions of well-mixed GHGs from certain classes of aircraft engines used in covered aircraft contribute to the air pollution which endangers public health and welfare under CAA section 231(a)(2)(A). The EPA's responses to some of the most significant comments for the cause or contribute finding are provided later in section V.C. Responses to all significant issues raised by the comments on the cause or contribute finding are contained in the Response to Comments document, which is organized by subject area (found in docket EPA–HQ–OAR–2014–0828).

A. The Air Pollutant

1. Definition of Air Pollutant

Under section 231(a)(2)(A), the Administrator is to determine whether *emissions of any air pollutant* from any class or classes of aircraft engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. As with the 2009 Endangerment Finding that the EPA conducted for purposes of CAA section 202(a), when making a cause or contribute finding under section 231(a)(2), the Administrator must first define the air pollutant being evaluated. The Administrator has considered the logical relationship between the GHG air pollution and air pollutant: While the air pollution is the concentration (*e.g.,* stock) of the well-mixed GHGs in the atmosphere, the air pollutant is the same combined grouping of the well-mixed GHGs, the emissions of which are analyzed for contribution (*e.g.,* the flow into the stock). See 74 FR at 66536 (similar discussion with respect to the finding for CAA section 202(a)). For purposes of section 231(a)(2)(A), the Administrator is defining the air pollutant as the same combined grouping of the six well-mixed GHGs that comprises the air pollution. Accordingly, the Administrator is using the same definition of the air pollutant that was used in the 2009 Endangerment Finding for purposes of CAA section 202(a), namely, the aggregate group of the same six well-mixed GHGs: CO_2, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. See 74 FR at 66536–37 (discussing the definition of the GHG air pollutant with respect to the finding for CAA section 202(a)). That is, as was done for the 2009 Endangerment Finding, the Administrator is defining a single air pollutant made up of these six GHGs in this action under CAA section 231(a)(2)(A).

To reiterate what the Agency has previously stated on this subject, this collective approach for the contribution test is consistent with the treatment of GHGs by those studying climate change science and policy, where it is common practice to evaluate GHGs on a collective, CO_2-equivalent basis.[202] This collective approach to defining the air pollutant is not unique; grouping of many substances with common attributes as a single pollutant is common practice under the CAA, for example with particulate matter and volatile organic compounds (VOC). As noted in section IV.B, these six substances share common attributes that support their grouping to define the air pollution for purposes of the endangerment finding. These same common attributes also support the Administrator grouping these six well-mixed GHGs for purposes of defining the air pollutant for this cause or contribute finding under CAA section 231(a)(2)(A).

The Administrator recognizes that in this case, the aircraft engines covered by this document emit two of the six gases, but not the other four gases. Nonetheless, it is entirely appropriate, and in keeping with the 2009 Endangerment Finding and past EPA practice, for the Administrator to define the air pollutant under CAA section 231(a)(2)(A) in a manner that recognizes the shared relevant properties of all these six gases, even though they are not all emitted from the classes of sources before her.[203] For example, a source may emit only 20 of the possible 200-plus chemicals that meet the definition of VOC in the EPA's regulations, but that source is evaluated based on its emissions of VOC and not on its emissions of the 20 chemicals by name. The fact that these six substances within the definition of GHGs share common, relevant attributes is true regardless of the type of sources being evaluated for contribution. Moreover, the reasonableness of grouping these chemicals as a single air pollutant does not turn on the particular source category. By using the definition of the air pollutant as comprised of the six GHGs with common attributes, the Administrator is taking account of these shared attributes and how they are relevant to the air pollution that endangers public health and welfare.

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[201] *CRR,* 684 F.3d at 117 (D.C. Cir. 2012), reh'g en banc denied, 2012 U.S. App. LEXIS 25997, 26313, 26315 (D.C. Cir. 2012); *see also Utility Air Reg. Group* v. *EPA,* 134 S. Ct. at 2438 (2014).

[202] As detailed in the 2009 Endangerment Finding proposal (74 FR at 18904) and continuing today, the UNFCCC, the U.S. and other Parties report their annual emissions of the six GHGs in CO_2-equivalent units. This facilitates comparisons of the multiple GHGs from different sources and from different countries, and provides a measure of the collective warming potential of multiple GHGs. Emissions of different GHGs are compared using GWPs, which as described in section IV.B of this document are measures of the warming impact of a pulse of emissions of a given substance over 100 years relative to the same mass of CO_2. Therefore, GWP-weighted emissions are measured in teragrams of CO_2 equivalent (Tg CO_2eq). One teragram (Tg) = 1 million metric tons = 1 megatonne (Mt). 1 metric ton = 1,000 kilograms = 1.102 short tons = 2,205 lbs. The EPA's Greenhouse Gas Reporting Program (*http://www.epa.gov/ghgreporting/index.html* (last accessed April 8, 2016)) also reports GHG emissions on a CO_2-equivalent basis, recognizing the common and collective treatment of these six well-mixed GHGs.

[203] In the 2009 Endangerment Finding, the Administrator found that four of the six gases that were included in the definition of the air pollutant were emitted by section 202 sources. 74 FR at 66537.

In fact, as explained in the 2009 Endangerment Finding, Congress has given the EPA broad discretion to determine that appropriate combinations of compounds should be treated as a single air pollutant. 74 FR at 66537. Section 302(g) of the CAA defines "air pollutant" as "any air pollutant agent or combination of such agents. . . ." Thus, it is clear that the term "air pollutant" is not limited to individual chemical compounds. Moreover, in determining that GHGs are within the scope of this definition, the Supreme Court described section 302(g) as a "sweeping" and "capacious" definition that unambiguously included GHGs, which are "unquestionably 'agents' of air pollution." *Massachusetts* v. *EPA,* 549 U.S. at 528, 532, 529 n. 26. Although the Court did not interpret the term "combination of" air pollution agents, there is no reason to interpret this phrase more narrowly in this context. Congress used the term "any" and did not qualify the kind of combinations that EPA could define as a single air pollutant.

2. The Definition of Air Pollutant May Include Substances Not Emitted by CAA Section 231(a)(2) Sources.

Similar to the discussion in section IV.B.6 for the definition of "air pollution" for purposes of the endangerment finding under CAA section 231(a)(2)(A), many commenters highlighted the fact that aircraft engines emit only two of the six well-mixed GHGs that together are defined as the "air pollutant" for purposes of the cause or contribute finding under section 231(a)(2)(A) of the CAA. Commenters point out that the majority of emissions are CO_2, while nitrous oxide emissions are described as "nominal (<1%)" or "trace." Some commenters ultimately concluded that the EPA's approach to defining the air pollutant as an aggregate group of six gases is acceptable, but that the scope of future regulations should be limited to CO_2. One commenter agreed with the Agency's evaluation of the six GHGs based on their common attributes, but questioned the EPA's decision to aggregate the six gases rather than considering them individually for purposes of making the findings. Other commenters disagreed with the EPA and requested limiting the definition of air pollutant in this action to CO_2 or to CO_2 and nitrous oxide.

The EPA disagrees with comments regarding changing the definition of the air pollutant to limit it to only those GHGs that are emitted from aircraft or to CO_2 only. The EPA has explained both in the 2009 Endangerment Finding under CAA section 202(a) and in the proposed findings under CAA section 231(a)(2)(A) that it is reasonable and appropriate for the EPA to consider the logical relationship between the GHG air pollution and air pollutant when defining the air pollutant. The purpose of this cause or contribute inquiry is to determine whether emissions of an air pollutant from certain aircraft engines cause or contribute to the endangering GHG air pollution. As described in section IV.B of this document, the endangering GHG air pollution under consideration is defined as the aggregate group of the six well-mixed GHGs based on shared characteristics and common attributes relevant to climate change science and policy"[204]—a rationale that does not take into consideration emission source(s). Similarly, the definition of the air pollutant in this cause or contribute inquiry establishes well-mixed GHGs as a single air pollutant comprised of six substances with common attributes. The Administrator is giving effect to the shared attributes of the six well-mixed GHGs and how they are relevant to the air pollution to which they contribute. Thus, it is also reasonable for the EPA to evaluate contribution for those gases in the aggregate, rather than individually, to ensure a like-to-like comparison of aggregate emissions contributing to an aggregate stock (atmospheric concentration) of endangering GHG air pollution.

The EPA recognized in the proposed findings that aircraft emit two of the six well-mixed GHGs, but stated that nonetheless it is entirely reasonable and appropriate, and in keeping with the 2009 Endangerment Finding under CAA section 202(a) and other past EPA practice, for the Administrator to group into a single class those substances that possess shared relevant properties, even though they are not all emitted from the classes of sources before her.[205] The fact that these six substances share these common, relevant attributes is true regardless of the source category being evaluated for contribution. After considering all the comments, this continues to be the EPA's view. Moreover, this approach to defining an air pollutant as a grouping of many substances is not unique to GHGs, but rather is common practice under the CAA. For example, the EPA has heavy-duty truck standards applicable to VOCs and PM, but it is highly unlikely that heavy-duty trucks emit every substance that is included in the group defined as VOC or PM. See 40 CFR 51.100(s) (defining volatile organic compound (VOC) as "any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions"; a list of exemptions are also included in the definition); 40 CFR 51.100(oo) (defining particulate matter (PM) as "any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers").

Grouping these six substances as one air pollutant is just as reasonable for the contribution analysis undertaken for CAA section 231(a)(2) sources that emit one subset of the six substances as it was for the category of sources that emits another subset under CAA section 202(a). In other words, it is not necessarily the source category, motor vehicles or aircraft engines, being evaluated for contribution that determines the reasonableness of defining a group air pollutant based on the shared attributes of the group's constituent substances. Even if the EPA defined the air pollutant as the group of two compounds emitted by CAA section 231(a)(2) sources, it would not change the result. The Administrator would make the same contribution finding (as described later in section V.B.), as it would have no material effect on the emissions comparisons discussed in section V.B.

The question of limits to the scope of future regulations is outside of the scope of this action because the EPA has neither proposed nor is finalizing in this action any such regulatory standards. This final action does not itself impose any requirements on source categories under CAA section 231. Thus, the EPA anticipates that this question could be raised and considered, as needed, in the standard-setting phase of the regulatory process, and invites potential commenters to submit their views on this issue in response to EPA's anticipated future notice of proposed rulemaking on standards.

Another commenter expressed concern about the EPA's proposed contribution finding because it does not differentiate between CO_2 emissions that result from combustion of fossil fuels and those that result from "combustion of biomass or biofuels derived from herbaceous crops or crop residues, as well as biogenic CO_2 emissions associated with the production, gathering and processing of crops or crop residues used in bio-based products including fuels."[206] The commenter argues that such crop-related biogenic CO_2 emissions should be excluded from the contribution finding because the CO_2 released back to the atmosphere when emitted from crop-derived biogenic sources contains the same carbon that was previously removed or sequestered from CO_2 in the atmosphere, and thus does not contribute to elevated atmospheric concentrations of the six well-mixed GHGs.

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[204] 74 FR at 66517–19; 80 FR at 37774–85.

[205] 80 FR at 37774–85, and 37787.

Consistent with the previously discussed response to the commenter in the discussion of the definition of air pollution being used under CAA section 231(a)(2)(A), the EPA reiterates that the Administrator defines the relevant air pollutant considered in the contribution finding as the aggregate group of the six well-mixed GHGs based on shared physical characteristics and common attributes relevant to climate change science and policy, and does not include consideration of the source of the air pollutant. In the record for the 2009 Endangerment Finding under CAA section 202(a), the Agency stated that "all CO_2 emissions, regardless of source, influence radiative forcing equally once it reaches the atmosphere and therefore there is no distinction between biogenic and non-biogenic CO_2 regarding the CO_2 and the other well-mixed GHGs within the definition of air pollution that is reasonably anticipated to endanger public health and welfare."[207] The EPA continues to hold that position in these findings under CAA section 231(a)(2)(A), which is supported by the evidence before it. First, the fact that these CO_2 emissions originate from combustion of carbon-based fuels created through different processes is not relevant to defining the air pollutant that contributes to the endangering air pollution. The origin and constitution of a fuel prior to its combustion and subsequent emission into the atmosphere has no bearing on the fact that CO_2 and the other well-mixed GHGs are all sufficiently long lived to become well mixed in the atmosphere, directly emitted, of well-known radiative forcing, and generally grouped and considered together in climate change scientific and policy forums as the primary driver of climate change. A molecule of biogenic CO_2 has the same radiative forcing effect as a molecule of fossil-fuel derived CO_2. In other words, no matter the original source of the CO_2, the behavior of the CO_2 molecules in the atmosphere in terms of radiative forcing, chemical reactivity, and atmospheric lifetime is effectively the same. Any differential treatment of biogenic CO_2 in the context of the contribution finding under CAA section 231(a)(2)(A) would be inconsistent with the primary scientific basis for the grouping of the six well-mixed GHGs as a single class for purposes of identifying the air pollutant (and air pollution, as explained in section IV.B.1). A more detailed response to the issues raised in this comment can be found in the Response to Comments document in the docket.

B. The Administrator's Finding Under CAA Section 231(a)(2)(A) That Greenhouse Gas Emissions From Certain Classes of Aircraft Engines Used in Certain Aircraft Cause or Contribute to Air Pollution That May Be Reasonably Anticipated To Endanger Public Health and Welfare

Under CAA section 231(a)(2)(A), the Administrator finds that emissions of the six well-mixed GHGs from classes of engines used in U.S. covered aircraft, which are subsonic jet aircraft with a maximum takeoff mass (MTOM) greater than 5,700 kilograms and subsonic propeller driven (*e.g.,* turboprop) aircraft with a MTOM greater than 8,618 kilograms, contribute to the air pollution that endangers public health and welfare. The Administrator is not at this time making a contribution finding regarding GHG emissions from engines not used in covered aircraft (*i.e.,* those used in smaller turboprops, smaller jet aircraft, piston-engine aircraft, helicopters and military aircraft), or regarding the emission of other substances emitted by aircraft engines. A detailed discussion of covered aircraft and their GHG emissions data is provided below in section V.B.4.

The Administrator reached her decision after reviewing emissions data on the contribution of covered aircraft under CAA section 231(a) relative to both U.S. GHG and global GHG emissions inventories. It is the Administrator's judgment that the collective GHG emissions from the classes of engines used in U.S. covered aircraft clearly contribute to endangering GHG pollution, whether the comparison is—as described later in Tables V.1 and V.3 of sections V.B.4.a and V.B.4.b respectively—to domestic GHG inventories (10 percent of all U.S. transportation GHG emissions, representing 2.8 percent of total U.S. emissions), to global GHG inventories (26 percent of total global aircraft GHG emissions representing 2.7 percent of total global transportation emissions and 0.4 percent of all global GHG emissions), or if using a combination of domestic and global inventory comparisons. Both domestic and global comparisons, independently and jointly, support the contribution finding under CAA section 231(a)(2)(A).[208] [209] [210] Making this cause or contribute finding for engines used in U.S. covered aircraft results in the vast majority (89 percent) of total U.S. aircraft GHG emissions being included in this determination (as described later in Table V.1 of section V.B.4.a.). Covered U.S. aircraft GHG emissions are from aircraft that operate in and from the U.S. and thus contribute to emissions in the U.S. This includes emissions from U.S. domestic flights, and emissions from U.S. international bunker flights (emissions from the combustion of fuel used by aircraft departing the U.S., regardless of whether they are a U.S. flagged carrier—also described as emissions from combustion of U.S. international bunker fuels[211]). In addition, the Administrator based her decision on all the information in the record for this finding, including the public comments received on the proposed finding.

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[206] Biogenic CO_2 Coalition, 2015: Comments on EPA's Proposed Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare, 80 FR 37757 (July 1, 2015). Docket ID number EPA–HQ–OAR–2014–0828–0916. Available at *www.regulations.gov* (last accessed April 11, 2016).

[207] EPA, 2009. Response to Comments document, Volume 9: The Endangerment Finding, EPA–HQ–OAR–2009–0171–11676. Available at *www.regulations.gov* (last accessed April 11, 2016).

[208] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html* (last accessed June 14, 2016).

[209] IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, 1435 pp.

[210] The domestic inventory comparisons are for the year 2014, and global inventory comparisons are for the year 2010. The rationale for the different years is discussed later in section V.B.4.

[211] For example, a flight departing Los Angeles and arriving in Tokyo, regardless of whether it is a U.S. flagged carrier, is considered a U.S. international bunker flight. A flight from London to Hong Kong is not.

1. The Administrator's Approach in Making This Finding

As it did for the 2009 Endangerment Finding under CAA section 202(a), and consistent with prior practice and current science, under this CAA section 231(a)(2)(A) contribution finding the EPA uses annual emissions as a reasonable proxy for contributions to the endangering air pollution, *i.e.*, the elevated atmospheric concentrations of the six well-mixed GHGs. Cumulative anthropogenic emissions are primarily responsible for the observed change in GHG concentrations in the atmosphere (*i.e.*, the fraction of a country's or an economic sector's cumulative emissions compared to global GHG emissions over a long time period will be roughly equal to the fraction of the change in concentrations attributable to that country or economic sector); likewise, annual GHG emissions are a reasonable proxy for annual incremental changes in atmospheric GHG concentrations.

There are a number of possible ways of assessing whether a source's emissions of air pollutants cause or contribute to the endangering air pollution, and no single approach is required or has been used exclusively in previous determinations under the CAA. Because under this CAA section 231(a)(2)(A) action the air pollution against which the contribution of air pollutant emissions is being evaluated is the six well-mixed GHGs, one reasonable starting point for a contribution analysis is a comparison of the emissions of the air pollutant from the aircraft under consideration to the total U.S. and total global emissions of these six GHGs. The Administrator recognizes that there are other valid comparisons that can be considered in evaluating whether emissions of the air pollutant cause or contribute to the combined concentration of these six GHGs. To inform the Administrator's assessment, section V.B.4 presents the following types of simple and straightforward comparisons of covered U.S. aircraft GHG emissions:

- As a share of current total U.S. GHG emissions;
- As a share of current U.S. transportation GHG emissions;
- As a share of current total global GHG emissions; and
- As a share of the current global transportation GHG emissions.

All annual GHG emissions data are reported on a CO_2-equivalent (CO_2eq) basis, which as described above is a commonly used metric to convert GHG emissions into standard units so they can be compared. This approach is consistent with how the EPA determined contribution for GHGs under section 202(a) of the CAA in 2009.

2. Details of the Administrator's Approach in Making This Cause or Contribute Finding

The Administrator believes that consideration of the global context is important for the cause or contribute finding under CAA section 231(a)(2)(A), but that the analysis should not solely consider the global context. GHG emissions from engines used in U.S. covered aircraft will become globally well-mixed in the atmosphere, and thus will have an effect not only on the U.S. regional climate but also on the global climate as a whole, for many decades to come. It is the Administrator's view that it is reasonable for the cause or contribute analysis conducted under CAA section 231(a)(2)(A) for GHGs emitted by covered U.S. aircraft engines to be consistent with the reasoning supporting the 2009 GHG cause or contribute finding under CAA section 202, as the relevant statutory provisions are parallel and as the pollutant is the same. Accordingly, the Administrator finds a positive cause or contribute finding for GHG emissions from engines used in U.S. covered aircraft is justified whether only the domestic context is considered, only the global context is considered, or both the domestic and global GHG emissions comparisons are viewed in combination. Both domestic and global comparisons, independently and jointly, are equally important for the finding.

In the 2009 CAA section 202(a) cause or contribute finding, the Administrator considered the totality of the circumstances in order to best understand the role played by CAA section 202(a) source categories in emitting air pollutants that contribute to endangering GHG air pollution, consistent with Congress' intention for EPA to consider the cumulative impact of all emissions from sources to the endangering air pollution. In that context, the global nature of the air pollution problem and the breadth of countries and sources emitting GHGs meant that no single country or source category dominated contribution to the endangering air pollution on the global scale.[212] As was the case in 2009, it is still true that no single country or GHG source category dominates contribution to the collective stock of endangering GHG air pollution on the global scale, and contributions from individual GHG source categories may appear small in comparison to the total stock, when, in fact, they are very important contributors in terms of both absolute emissions or in comparison to GHG emissions from other source categories, globally or within the United States. That is, because climate change is a global problem that results from global GHG emissions, it is more the result of numerous and varied sources each emitting what may seem to be smaller percentages of GHG pollutants compared to the total stock of GHG pollution, than typically might be encountered when tackling solely regional or local environmental issues for different kinds of pollutants that may have more of a direct impact on receptors located in the relative vicinity of the polluting sources (such as emissions of lead, for example, or sulfur dioxide without consideration of its role as possible precursor to particulate matter). It is reasonable for the Administrator to take these circumstances into account in making a contribution determination regarding emissions from sources of GHGs, as the impacts from GHGs are not spatially or temporally limited.[213] Therefore, in order to address the risks associated with global climate change, it is less likely that a single "majority" contributing source category could be identified and controlled such that the risks could be eliminated, without the need to consider contributions to the endangering stock of air pollution from "minority" source categories that may present smaller percentages of contribution than may sometimes be encountered when tackling regional or local environmental threats presented by a single or limited set of dominant sources. Thus, in addressing GHG risks, it will be, as the Supreme Court suggested in *Massachusetts* v. *EPA*, necessary for agencies to take an incremental approach to resolving the larger GHG endangerment issue, as "[a]gencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop. . . . They instead whittle away at them over time, refining their preferred approach as circumstances change and as they develop a more nuanced understanding of how best to proceed." 549 U.S. 497, 524 (2007) (citations omitted). The Administrator continues to believe that the unique, global aspects of the climate change problem—including that from a percentage perspective there are no dominating sources or countries for GHG emissions contributing to the endangering GHG air pollution and that the global problem is due more to the GHG emissions contributed from numerous and varied sources—justify consideration of contribution to the endangering air pollution at lower percentage levels than the EPA typically might encounter when analyzing contribution towards a more localized air pollution problem. This is not to suggest, however, that all or even most local or regional air pollution problems are due to a single or small set of sources. For example, regional haze and ambient concentrations of concern for ozone, carbon monoxide, and particulate matter are commonly the result of a variety and great number of contributing sources, and the EPA has frequently approached such problems by incrementally regulating a set of sources that, in isolation, is not contributing the dominant share of air pollutants to the stock of air pollution, but is contributing a meaningful share. This approach has been affirmed by reviewing courts as reasonable and lawful under the CAA. *See, e.g., Bluewater Network* v. *EPA,* 370 F.3d 1 (D.C. Cir. 2004). Thus, the Administrator, similar to the approach taken in the 2009 GHG cause or contribute finding under CAA section 202(a), is under CAA section 231(a)(2)(A) placing weight on the fact that engines used in U.S. covered aircraft, as discussed in detail in sections V.B.4.a of this document, contribute the single largest share of GHG emissions from transportation sources in the United States that have not yet been regulated for GHG emissions, and that such GHG emissions from U.S. covered aircraft are a meaningful contribution to total U.S. and total global GHG emissions inventories.

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[212] 74 FR at 66538.

[213] 74 FR at 66543.

3. Additional Considerations

The Administrator also considered information that showed that reasonable estimates of GHG emissions from engines used in U.S. covered aircraft are projected to grow over the next 20 to 30 years, in making her contribution finding under CAA section 231(a)(2)(A). Given the projected growth in aircraft emissions compared to other sectors, it is reasonable for the Administrator to consider future emissions projections as further supporting her assessment of historical annual emissions (recent emissions from the current fleet) and informing her contribution determination. As described with further detail later in section V.B.4.c, recent FAA projections reveal that by 2036 GHG emissions from all aircraft and from U.S. covered aircraft are likely to increase by 43 percent (from 191 Tg CO_2eq to 272 Tg CO_2eq for the years 2010 to 2036).[214] By contrast, it is estimated that by 2036 the light-duty vehicle sector is projected to see a 25 percent reduction in GHG emissions (1,133 Tg CO_2eq to 844 Tg CO_2eq) from the 2010 baseline, while the freight trucks sector is projected to experience a 23 percent increase in GHG emissions (390 Tg CO_2eq to 478 Tg CO_2eq) from the 2010 baseline (this projected increase does not reflect the impact of GHG reductions on the freight trucks sector anticipated from the Phase 2 heavy-duty GHG standards that have not yet been promulgated). In addition, by 2036 the rail sector is projected to experience a 3 percent reduction in GHG emissions (44 Tg CO_2eq to 43 Tg CO_2eq) from the 2010 baseline.[215] Because the projected growth in aircraft engine GHG emissions from U.S. covered aircraft through 2036 is more than 80 Tg CO_2eq,[216] this consideration of projected future emissions adds further support to the Administrator's finding under CAA section 231(a)(2)(A) that emissions of the six well-mixed greenhouse gases from classes of engines used in U.S. covered aircraft contribute to the GHG air pollution that endangers public health and welfare.[217]

4. Overview of Greenhouse Gas Emissions

Atmospheric concentrations of CO_2 and other GHGs are now at essentially unprecedented levels compared to the distant and recent past.[218] This is the unambiguous result of human-activity emissions of these gases. See section IV.B.2 for more information on elevated atmospheric GHG concentrations and anthropogenic drivers of climate change. Global emissions of well-mixed GHGs have been increasing, and are projected to continue increasing for the foreseeable future. According to the IPCC AR5, total global (when using inventories from all anthropogenic emitting sources including forestry and other land use) emissions of GHGs in 2010 were 49,000 Tg CO_2eq.[219] This represents an increase in global GHG emissions of 29 percent since 1990 and of 23 percent since 2000. In 2010, total U.S. GHG emissions were responsible for 13 percent of global GHG emissions (when comparing inventories from all anthropogenic emitting sources including forestry and other land use).[220]

We are also providing 2012 estimates from other widely used and recognized global datasets, the World Resources Institute's (WRI) Climate Analysis Indicators Tool (CAIT) and the International Energy Agency (IEA).[221] We are providing these data for several reasons; first, there is value in looking at multiple data sources to see if estimates are generally in line with one another. Second, there are more recent data available in the WRI/CAIT and IEA datasets (2010 IPCC data vs. 2012 WRI/CAIT and IEA data). Third and finally, these other datasets provide additional utility for examining different disaggregations of the data (by country, sector, and with or without forestry and other land use emissions). Unless otherwise noted, we are presenting data points from these other datasets without including data regarding forestry and other land use inventories to enable straightforward comparisons of gross emission estimates from transportation sources specifically. The total global GHG emissions in 2012 from WRI/CAIT were 44,816 Tg of CO_2eq, representing an increase in global GHG emissions of 47 percent since 1990 and 32 percent since 2000. In comparison, WRI/CAIT's estimate of total global GHG emissions in 2012 when including forestry and other land use inventories were 47,599 Tg of CO_2eq (representing an increase in global GHG emissions of 40 percent since 1990 and 30 percent since 2000). In past years, WRI/CAIT estimates have generally been consistent with those of IPCC. In 2012, WRI/CAIT data indicate that total U.S. GHG emissions were responsible for 15 percent of global emissions, which is also generally in line with the percentages using IPCC's 2010 estimate described above. According to WRI/CAIT, current U.S. GHG emissions rank only behind China's, and China was responsible for 24 percent of total global GHG emissions.

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[214] As discussed in section V.B.4.c, fuel burn growth rates for air carriers and general aviation aircraft operating on jet fuel are projected to grow by 43 percent from 2010 to 2036 and this provides a scaling factor for growth in projected GHG emissions, which are projected to increase at a similar rate as the fuel burn by 2030, 2036, and 2040.

FAA, 2016: *FAA Aerospace Forecast Fiscal Years 2016–2036,* 94 pp. Available at *https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_Aerospace_Forecast.pdf* (last accessed March 29, 2016).

[215] U.S. Energy Information Administration (EIA), 2015: *Annual Energy Outlook (AEO) 2015 with projections to 2040,* DOE/EIA–0383, 154 pp. For the years 2010 to 2014, the baseline emissions for each sector are from the 2016 *Inventory of U.S. Greenhouse Gas Emissions and Sinks Report,* and after 2014 we utilize projections from the 2015 EIA AEO report. Available at *http://www.eia.gov/forecasts/aeo/* (last accessed May 12, 2015).

[216] In addition, we expect aircraft engine GHG emissions from U.S. covered aircraft to continue contributing to the endangering pollution in the future and to be a bigger percentage of transportation emissions, since these emission are projected to increase at a faster rate than other transportation sources.

[217] In 2010, U.S covered aircraft were responsible for 10 percent of U.S. transportation sector GHG emissions, and in 2036, U.S. covered aircraft are projected to be the source of 15 percent of U.S. transportation GHG emissions. In 2010, light-duty vehicles were responsible for 58 percent of U.S. transportation GHG emissions, and in 2036 they are projected to be the source of 46 percent of such emissions. In 2010, heavy-duty vehicles emitted 20 percent of U.S. transportation GHG emissions, and in 2036, they are projected to emit 26 percent (this projection does not reflect the impact from the Phase 2 heavy-duty GHG standards that have not yet been promulgated). In 2010, the rail sector contributed 2 percent of U.S. transportation GHG emissions, and in 2036, they are projected to contribute the same percentage.

[218] IPCC, 2013: *Summary for Policymakers. In: Climate Change 2013: The Physical Science Basis.* Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, p. 11.

[219] IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, 1435 pp.

[220] IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, 351–411 pp.

[221] World Resources Institute (WRI) Climate Analysis Indicators Tool (CAIT) Data Explorer (Version 2.0). Available at *http://cait.wri.org* (last accessed January 19, 2016). International Energy Agency, Data Services. Available at *http://data.iea.org* (last accessed January 21, 2016).

As described earlier in section IV.A, in the proposed finding and this final finding, the Administrator considers the recent, major scientific assessments of the IPCC, USGCRP, and the NRC as the primary scientific and technical basis informing her judgment. Thus, the Administrator is informed by and places considerable weight upon the IPCC's data on global GHG emissions. She also considers but places less emphasis on the WRI/CAIT and IEA emissions data, which in comparison have a different aggregation of underlying data but are available for more recent years (2010 IPCC data vs. 2012 WRI/CAIT and IEA data).

The approach of considering the major scientific assessments, including IPCC's assessment, provides assurance that the Administrator's judgment is informed by the best available, well-vetted science that reflects the consensus of the climate science research community. The major findings of the assessments, including IPCC's assessment, support the Administrator's findings in this action. While the EPA uses the IPCC data as the primary data source for informing this contribution finding, it has reasonably used additional data sources from widely used and recognized global datasets to provide context and information from more recent years. These additional data supplement and confirm the IPCC data, as they are generally in line with IPCC. Comparing their 2010 total global GHG emissions, IPCC data are 49,000 Tg CO_2eq, and WRI/CAIT data indicates 42,968 Tg CO_2eq (a 12 percent difference).[222] Also, comparing their 2010 global aircraft GHG emissions estimates, IPCC data are 743 Tg CO_2eq, and IEA data indicate 749 Tg CO_2eq (a 1 percent difference).[223] Ultimately, whether the Agency utilizes the IPCC data alone or the WRI/CAIT dataset (and IEA data) alone, or both datasets together, it would have no material effect on the emissions comparisons discussed in section V.B and the Administrator would make the same contribution finding.

The *Inventory of U.S. Greenhouse Gas Emissions and Sinks Report*[224] (hereinafter "U.S. Inventory"), in which 2014 is the most recent year for which data are available, indicates that total U.S. GHG emissions increased by 7.3 percent from 1990 to 2014 (or by 7.8 percent when using inventories that include forestry and other land use), and emissions increased from 2013 to 2014 by 1.1 percent.[225] This 2013 to 2014 increase was attributable to multiple factors including an increase in vehicle miles traveled and vehicle fuel use, a colder winter resulting in an increased demand for heating fuel, and an increase in industrial production across multiple sectors. The U.S. Inventory also shows that while overall U.S. GHG emissions grew between 1990 and 2014, transportation GHG emissions grew at a significantly higher rate, 16 percent, more rapidly than any other U.S. sector. Within the transportation sector, aircraft remain the single largest source of GHG emissions not yet subject to any GHG regulations (U.S. covered aircraft GHG emissions grew by 15 percent between 1990 and 2014, and total U.S. aircraft GHG emissions decreased by 3 percent over this same time period).[226]

Section V.B.4.a which follows describes U.S. aircraft GHG emissions within the domestic context, while section V.B.4.b describes these same GHG emissions in the global context. Section V.B.4.c addresses future projections of aircraft GHG emissions.

a. U.S. Aircraft GHG Emissions Relative to U.S. GHG Transportation and Total U.S. GHG Inventory

Relying on data from the U.S. Inventory, we compare total U.S. aircraft GHG emission and U.S. covered aircraft GHG emissions to the transportation sector and to total U.S. GHG emissions as an indication of the role this source plays in the total domestic portion of the air pollution that is endangering by causing climate change. We are providing information about total U.S. aircraft GHG emissions for purposes of giving context for the discussion of GHG emissions from U.S. covered aircraft, which are included in this contribution finding under CAA section 231(a)(2)(A). As explained in more detail below, the contribution finding under CAA section 231(a)(2)(A) in this action does not include GHG emissions from all aircraft that operate in and from the U.S. and thus emit GHGs in the U.S.

In 2014, total U.S. GHG emissions from all sources were 6,975 Tg CO_2eq. As stated above, total U.S. GHG emissions have increased by 7.3 percent between 1990 and 2014, while U.S. transportation GHG emissions from all categories have grown 16 percent since 1990. The U.S. transportation sector was the second largest GHG-emitting sector (behind electricity generation), contributing 1,919 Tg CO_2eq or 28 percent of total U.S. GHG emissions in 2014. This sectoral total and the total U.S. GHG emissions include emissions from combustion of U.S. international bunker fuels, which are fuels used for transport activities from aviation (both commercial and military) and marine sources. Following the IPCC guidelines for common and consistent accounting and reporting of GHGs, the UNFCCC requires countries to report both total national GHG emissions and international bunker fuel emissions (aviation and marine international bunker fuel emissions), and though these emissions are reported separately, both are assigned to the reporting country. In meeting the UNFCCC reporting requirements, the U.S. Inventory calculates international bunker fuel GHG emissions in a consistent manner with domestic GHG emissions. In this final contribution finding, the EPA maintains its approach used in the proposed findings to include aviation international bunker fuel emissions attributable to the United States with the national emissions number from the U.S. Inventory as reported to the UNFCCC. It is the EPA's view that it is reasonable and appropriate for the analysis in the contribution finding to reflect the full contribution of U.S. emissions from certain classes of aircraft engines, including those from domestic flights of U.S. aircraft and those associated with international aviation bunker fuel emissions. Consistent with IPCC guidelines for common and consistent accounting and reporting of GHGs under the UNFCCC, the "U.S. international aviation bunker fuels" category includes emissions from combustion of fuel used by aircraft departing from the United States, regardless of whether they are a U.S. flagged carrier. Total U.S. aircraft GHG emissions (which include emissions from international commercial and military aviation bunker fuels) clearly are included in the U.S. transportation sector's GHG emissions, accounting for 222 Tg CO_2eq or 12 percent of such emissions (see Table V.1). In 2014, total U.S. aircraft GHG emissions (222 Tg CO_2eq) were the third largest transportation source of GHGs within the United States, behind GHG emissions from light-duty vehicles and medium- and heavy-duty trucks (totaling 1,508 Tg CO_2eq).

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[222] Comparing their 2010 total global GHG emissions, IPCC data are 49,000 Tg CO_2eq, and WRI/CAIT data, including forestry and land use inventories, indicates 45,748 Tg CO_2eq (a 7 percent difference).

[223] Comparing 2012 WRI/CAIT to 2010 IPCC data, WRI/CAIT data for total global GHG emissions indicates 44,816 Tg CO_2eq for 2012 (a 9 percent difference), and including forestry and land use inventories WRI/CAIT data indicates 47,599 Tg CO_2eq for 2012 (a 3 percent difference). Comparing 2012 IEA data to 2010 IPCC data, IEA data for global aircraft GHG emissions indicates 775 Tg CO_2eq for 2012 (a 4 percent difference).

[224] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html* (last accessed June 14, 2016). The EPA has determined that the U.S. Inventory has been adequately reviewed in accordance with the EPA's Peer Review Handbook. For the presentation of emissions inventory information in this contribution finding, the EPA disaggregated the existing data in one area of the U.S. Inventory (for the General Aviation Jet Fuel Category) and had the disaggregation methodology peer reviewed in accordance with the EPA's Peer Review Handbook. The EPA Science Advisory Board reviewed this approach to the underlying technical and scientific information supporting this action, and concluded that the approach had precedent and the action will be based on well-reviewed information. All relevant peer review documentation is located in the docket for today's final action (EPA–HQ–OAR–2014–0828).

[225] As described later in detail, total U.S. GHG emissions, include emissions from combustion of U.S. international bunker fuels, which are fuels used for transport activities from aviation (both commercial and military) and marine sources.

[226] As described later in detail, total U.S. GHG emissions, U.S. transportation GHG emissions, total U.S. aircraft GHG emissions, and U.S. covered aircraft GHG emissions include emissions from combustion of U.S. international bunker fuels. More specifically, total U.S. aircraft GHG emissions include international bunker fuel emissions from both commercial and military aviation. U.S. covered aircraft GHG emissions include international bunker fuel emissions from only commercial aviation.

For purposes of making this cause or contribute finding, the EPA includes a set of aircraft engine classes used in types of aircraft as described below, which corresponds to the scope of the international CO_2 emissions standard agreed to by ICAO. These emissions are from what we have previously described as "covered aircraft" (which include emissions from international commercial aviation bunker fuels).

As mentioned earlier in section II.D, traditionally the U.S. government (EPA and FAA) participates at ICAO in the development of international standards, and then where appropriate, the EPA establishes domestic aircraft engine emission standards under CAA section 231 of at least equivalent stringency to ICAO's standards. An international CO_2 emissions standard was agreed to in February 2016, and we expect to proceed with proposing emissions standards of at least equivalent stringency domestically as soon as is practicable. The thresholds of applicability for the international CO_2 emissions standard are based on weight as follows: For subsonic jet aircraft, a maximum takeoff mass (MTOM) greater than 5,700 kilograms; and for subsonic propeller driven (*e.g.,* turboprop) aircraft, a MTOM greater than 8,618 kilograms.[227] Applying these weight thresholds, our contribution finding applies to GHG emissions from classes of engines used in covered aircraft that meet these MTOM criteria. For purposes of the contribution finding, examples of covered aircraft include smaller jet aircraft such as the Cessna Citation CJ3+ and the Embraer E170, up to the largest commercial jet aircraft—the Airbus A380 and the Boeing 747. Other examples of covered aircraft include larger turboprop aircraft, such as the ATR 72 and the Bombardier Q400. The scope of the contribution finding corresponds to the aircraft engine GHG emissions that are from aircraft that match the applicability thresholds for the international aircraft CO_2 standard. We have also identified aircraft that are not covered aircraft for purposes of this contribution finding. That includes aircraft that fall below the international applicability thresholds: Smaller turboprop aircraft, such as the Beechcraft King Air 350i, and smaller jet aircraft, such as the Cessna Citation M2. In addition, ICAO (with U.S. participation) has agreed to exclude "piston-engine aircraft," "helicopters," and "military aircraft" [228] from the types of aircraft that will be subject to the ICAO standards.[229] As these aircraft will not be subject to the ICAO standards, in this contribution finding we are also not including GHG emissions from classes of engines used in these types of aircraft. We stress that our exclusion of these aircraft does not reflect a final scientific or technical determination regarding their GHG emissions. Rather, consistent with how the endangerment finding does not include various other climate forcers within the scope of the "air pollution" defined in this final action, we are not prepared to make final decisions regarding the GHG emissions from these excluded aircraft.

The majority of the GHG emissions from all classes of aircraft engines are within the scope of this contribution finding, which corresponds to that agreed to by ICAO. Below we describe the contribution of these U.S. covered aircraft GHG emissions to U.S. GHG emissions, and later in section V.B.4.b we discuss the contribution of these U.S. covered aircraft emissions to global GHG emissions, in support of our conclusion that GHG emissions from engines used by U.S. covered aircraft contribute to endangering GHG air pollution.

In 2014, GHG emissions from U.S. covered aircraft (197 Tg CO_2eq), which includes non-military GHG emissions from combustion of U.S. international aviation bunker fuels,[230] comprised 89 percent of total U.S. aircraft GHG emissions [231] (222 Tg CO_2eq) and 10 percent of total U.S. transportation sector GHG emissions (1,919 Tg CO_2eq) (See Table V.1). Overall, U.S. covered aircraft comprised the third largest source of GHG emissions in the U.S. transportation sector behind only the light-duty vehicle and medium- and heavy-duty truck sectors (totaling 1,508 Tg CO_2eq),[232] which is the same ranking as total U.S. aircraft.[233] The U.S. covered aircraft also represent 2.8 percent of total U.S. GHG emissions (6,975 Tg CO_2eq), which is approximately equal to the contribution from total U.S. aircraft of 3.2 percent (Table V.1).[234] Also, in Table V.2 for background information and context, we provide similar information, but excluding GHG emissions from aviation combustion of U.S. international bunker fuels.[235]

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[227] ICAO, 2013: *CAEP/9 Agreed Certification Requirement for the Aeroplane CO_2 Emissions Standard,* Circular (Cir) 337, 40 pp., AN/192, Available at *http://www.icao.int/publications/catalogue/cat_2016_en.pdf* (last accessed April 8, 2016). The ICAO Circular 337 is found on page 87 of the ICAO Products & Services 2016 catalog and is copyright protected; Order No. CIR337.

[228] ICAO regulations only apply to civil aviation (aircraft and aircraft engines); consequently, ICAO regulations do not apply to military aircraft.

[229] The applicability of the international CO_2 standard is limited to subsonic aircraft, and does not extend to supersonic aircraft.

[230] U.S. covered aircraft does not include military aircraft that use U.S. international bunker fuels.

[231] Eastern Research Group, Incorporated (ERG), 2015: *U.S. Jet Fuel Use and CO_2 Emissions Inventory for Aircraft Below ICAO CO_2 Standard Thresholds,* Final Report, EPA Contract Number EP–D–11–006, 38 pp.

[232] In 2014, the U.S. light-duty vehicle (passenger cars and light-duty trucks) GHG emissions were 1,101 Tg CO_2eq and the medium- and heavy-duty truck GHG emissions were 407 Tg CO_2eq.

It is important to note that in regard to the six well-mixed GHGs (CO_2, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride), only two of these gases—CO_2 and nitrous oxide—are reported as non-zero emissions for total aircraft and covered aircraft.[236] CO_2 represents 99 percent of all GHGs from both total U.S. aircraft (220 Tg CO_2eq) and U.S. covered aircraft (195 Tg CO_2eq), and nitrous oxide represents 1 percent from total aircraft (2.1 Tg CO_2eq) and covered aircraft (1.9 Tg CO_2eq). Modern aircraft do not emit methane,[237] and hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are not products of aircraft engine combustion.

TABLE V.1 [238] [239]—COMPARISONS OF U.S. AIRCRAFT GHG EMISSIONS TO TOTAL U.S. TRANSPORTATION AND TOTAL U.S. GHG EMISSIONS

	1990	2000	2005	2010	2012	2013	2014
Total U.S. Aircraft GHG emissions (Tg CO_2eq)	228	262	254	216	212	216	222
Share of U.S. Transportation	14%	13%	12%	11%	11%	11%	12%
Share of total U.S. Inventory	3.5%	3.6%	3.4%	3%	3.1%	3.1%	3.2%
U.S. Covered Aircraft GHG emissions (Tg CO_2eq)	171	223	218	191	190	195	197
Share of U.S. aircraft GHG emissions	75%	85%	86%	88%	90%	90%	89%
Share of U.S. Transportation	10%	11%	10%	9.8%	10%	10%	10%
Share of total U.S. Inventory	2.6%	3%	2.9%	2.7%	2.8%	2.8%	2.8%
U.S. Transportation GHG emissions (Tg CO_2eq)	1,659	2,029	2,119	1,950	1,891	1,895	1,919
Share of total U.S. Inventory	26%	28%	28%	28%	28%	28%	28%
Total U.S. GHG emissions *(Tg CO_2eq)*	6,502	7,362	7,493	7,104	6,750	6,901	6,975

TABLE V.2 [240] [241]—COMPARISONS OF U.S. AIRCRAFT GHG EMISSIONS TO TOTAL U.S. TRANSPORTATION AND TOTAL U.S. GHG EMISSIONS—EXCLUDING U.S. INTERNATIONAL BUNKER FUELS [242]

	1990	2000	2005	2010	2012	2013	2014
Total U.S. Aircraft GHG emissions (Tg CO_2eq)	190	200	194	155	147	151	152
Share of U.S. Transportation	12%	10%	9.7%	8.5%	8.2%	8.4%	8.4%
Share of total U.S. Inventory	3%	2.8%	2.6%	2.2%	2.2%	2.2%	2.2%
U.S. Covered Aircraft GHG emissions (Tg CO_2eq)	141	166	162	133	128	132	130
Share of U.S. aircraft GHG emissions	74%	83%	84%	86%	87%	88%	86%
Share of U.S. Transportation	9%	8.6%	8.1%	7.3%	7.2%	7.4%	7.2%
Share of total U.S. Inventory	2.2%	2.3%	2.2%	1.9%	1.9%	1.9%	1.9%
U.S. Transportation GHG emissions (Tg CO_2eq)	1,554	1,927	2,004	1,832	1,784	1,794	1,815
Share of total U.S. Inventory	24%	27%	27%	26%	27%	26%	26%
Total U.S. GHG emissions *(Tg CO_2eq)*	6,397	7,259	7,379	6,986	6,643	6,800	6,871

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[233] Compared independently, total U.S. aircraft GHG emissions and U.S. covered aircraft GHG emissions are both ranked the third largest source in the U.S. transportation sector, behind only light-duty vehicle and medium- and heavy-duty truck sectors.

[234] Total U.S. aircraft GHG emissions and U.S. covered aircraft GHG emissions were from 12 to 31 percent greater in 2000 and 2005 than in 1990. These increases in aircraft GHG emissions are primarily because aircraft operations (or number of flights) grew by similar amounts during this time period. Also, total U.S. aircraft GHG emissions and U.S. covered aircraft GHG emissions were from 10 to 15 percent greater in 2000 and 2005 than in 2014. These decreases in aircraft GHG emissions are partly because aircraft operations decreased by similar amounts during this time period. In addition, the decreases in aircraft emissions are due in part to improved operational efficiency that results in more direct flight routing, improvements in aircraft and engine technologies to reduce fuel burn and emissions, and the accelerated retirement of older, less fuel efficient aircraft. Also, the U.S. transportation GHG emissions were changing at similar rates as total U.S. aircraft GHG emissions and U.S. covered aircraft GHG emissions for these same time periods, and thus, the aircraft GHG emissions share of U.S. Transportation remains approximately constant (over these time periods). (U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 558 pp. Available at *http://www3.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2016-Main-Text.pdf* (last accessed April 22, 2016)).

[235] For Table V.2, total U.S. aircraft GHG emissions and U.S. covered aircraft GHG emissions exclude emissions from aviation combustion of U.S. international bunker fuels. The U.S. transportation sector GHG emissions and total U.S. GHG emissions (in Table V.2) exclude emissions from both aviation and marine combustion of U.S. international bunker fuels.

[236] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html* (last accessed June 14, 2016).

[237] Emissions of methane from jet fuels are no longer considered to be emitted (based on the latest studies) across the time series from aircraft gas turbine engines burning jet fuel A at higher power settings (EPA, *Recommended Best Practice for Quantifying Speciated Organic Gas Emissions from Aircraft Equipped with Turbofan, Turbojet and Turboprop Engines,* EPA–420–R–09–901, May 27, 2009 (see *https://www3.epa.gov/otaq/regs/nonroad/aviation/420r09901.pdf* (last accessed April 22, 2016)). Based on this data, methane emissions factors for jet aircraft were reported as zero to reflect the latest emissions testing data. Also, the 2006 IPCC Guidelines indicate the following: "Methane (CH_4) may be emitted by gas turbines during idle and by older technology engines, but recent data suggest that little or no CH_4 is emitted by modern engines." (IPCC, 2006: *IPCC Guidelines for National Greenhouse Gas Inventories,* The National Greenhouse Gas Inventories Programme, The Intergovernmental Panel on Climate Change, H.S. Eggleston, L. Buendia, K. Miwa, T. Ngara, and K. Tanabe (eds.). Hayama, Kanagawa, Japan.) The EPA uses an emissions factor of zero to maintain consistency with the IPCC reporting guidelines, while continuing to stay abreast of the evolving research in this area. For example, one recent study has indicated that modern aircraft jet engines operating at higher power modes consume rather than emit methane (Santoni et al., 2011: *Aircraft Emissions of Methane and Nitrous Oxide during the Alternative Aviation Fuel Experiment,* Environ. Sci. Technol., 45 pp. 7075–7082).

[238] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html* (last accessed June 14, 2016).

[239] ERG, 2015: *U.S. Jet Fuel Use and CO_2 Emissions Inventory for Aircraft Below ICAO CO_2 Standard Thresholds,* Final Report, EPA Contract Number EP–D–11–006, 38 pp.

[240] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html* (last accessed June 14, 2016).

b. U.S. Aircraft GHG Emissions Relative to Global Aircraft GHG Inventory and the Total Global GHG Inventory

For background information and context, we first provide information on the portion of GHG emissions from global aircraft and the global transportation sector to total global GHG emissions, and describe how this compares to the emissions from aircraft covered by the ICAO CO_2 standard. We then compare U.S. aircraft GHG emissions to the global aircraft sector, to the global transport sector, and to total global GHG emissions as an indication of the role this source plays in the total global portion of the air pollution that is causing climate change. As in the preceding section, we present comparisons from both total U.S. aircraft GHG emissions and U.S. covered aircraft GHG emissions.

According to IPCC AR5, global aircraft GHG emissions in 2010 were 11 percent of global transport GHG emissions and 1.5 percent of total global GHG emissions. Data from ICAO's 2013 Environmental Report indicate that the vast majority of global emissions from the aircraft sector are emitted by the types of aircraft that are covered by the ICAO CO_2 standard (''ICAO covered aircraft''), which was agreed to in February 2016.[243] When compared to global data from IPCC AR5, worldwide GHG emissions from ICAO covered aircraft represented 93 percent (688 Tg CO_2eq) of global aircraft GHG emissions,[244] 9.8 percent of global transport GHG emissions, and 1.4 percent of total global GHG emissions in 2010.

Comparing data from the U.S. Inventory to IPCC AR5, we find that total U.S. aircraft GHG emissions represented 29 percent of global aircraft GHG emissions, 3.1 percent of global transport GHG emissions, and 0.5 percent of total global GHG emissions in 2010 (see Table V.3). U.S. covered aircraft in 2010 GHG emissions represented 26 percent of global aircraft GHG emissions, 2.7 percent of global transport GHG emissions, and 0.4 percent of total global GHG emissions (see Table V.3).[245] For reasons described above in section V.B.4, we also made comparisons using 2012 estimates from WRI/CAIT and the IEA and found that they yield very similar results.[246] Also, in Table V.4 for background information and context in regard to the global GHG inventory, we provide similar information, but excluding aviation GHG emissions from combustion of U.S. international bunker fuels.

TABLE V.3 [247]—COMPARISONS OF U.S. AIRCRAFT GHG EMISSIONS TO TOTAL GLOBAL GREENHOUSE GAS EMISSIONS IN 2010

	2010 (Tg CO_2 eq)	Total U.S. aircraft share (%)	U.S. covered aircraft share (%)[248]	Global aircraft share (%)
Global Aircraft GHG emissions	743	29	26	
Global Transport GHG emissions	7,000	3.1	2.7	11
Total Global GHG emissions	49,000	0.5	0.4	1.5

TABLE V.4 [249]—COMPARISONS OF U.S. AIRCRAFT GHG EMISSIONS TO TOTAL GLOBAL GREENHOUSE GAS EMISSIONS IN 2010—EXCLUDING AVIATION GHG EMISSIONS FROM COMBUSTION OF U.S. INTERNATIONAL BUNKER FUELS FROM THE U.S. AIRCRAFT GHG EMISSIONS

	2010 (Tg CO_2 eq)	Total U.S. aircraft share (%)	U.S. covered aircraft share (%)[250]	Global aircraft share (%)
Global Aircraft GHG emissions	743	21	18	
Global Transport GHG emissions	7,000	2.2	1.9	11
Total Global GHG emissions	49,000	0.4	0.3	1.5

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[241] ERG, 2015: *U.S. Jet Fuel Use and CO_2 Emissions Inventory for Aircraft Below ICAO CO_2 Standard Thresholds,* Final Report, EPA Contract Number EP–D–11–006, 38 pp.

[242] International bunker fuels emissions are emissions resulting from the combustion of fuels used for international transport activities, which includes aviation and marine. U.S. international bunker fuels includes aviation and marine bunker fuels allocated to the U.S. The U.S. international aviation bunker fuels category includes emissions from combustion of fuel used by aircraft departing from the United States, regardless of whether they are a U.S. flagged carrier. The U.S. international marine bunker fuels category includes emissions from the combustion of fuel used by vessels of all flags (that are engaged in international water-borne navigation) departing from the United States.

[243] ICAO CAEP, 2013: *ICAO Environmental Report 2013, Aviation and Climate Change,* 224 pp. Available at *http://cfapp.icao.int/Environmental-Report-2013/* (last accessed April 8, 2016).

[244] Worldwide GHG emissions from ICAO covered aircraft include emissions from both international and domestic aircraft operations around the world.

[245] We are providing information about total U.S. aircraft GHG emissions for purposes of giving context for the discussion of GHG emissions from U.S. covered aircraft, which are included in this contribution finding under CAA section 231(a)(2)(A). As explained in more detail below, the contribution finding under CAA section 231(a)(2)(A) in this action does not include GHG emissions from all aircraft that operate in and from the U.S and thus emit GHGs in the U.S.

[246] Data from WRI/CAIT (that excludes forestry and other land use inventories) and IEA show that, in 2012, total U.S. aircraft emissions represented 27 percent of global aircraft GHG emissions, 2.9 percent of global transport GHG emissions, and 0.5 percent of total global GHG emissions. U.S. covered aircraft represented 25 percent of global aircraft GHG emissions, 2.6 percent of global transport GHG emissions, and 0.4 percent of total global GHG emissions in 2012.

[247] IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, 1435 pp.

U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html* (last accessed June 14, 2016).

[248] ERG, 2015: *U.S. Jet Fuel Use and CO_2 Emissions Inventory for Aircraft Below ICAO CO_2 Standard Thresholds,* Final Report, EPA Contract Number EP–D–11–006, 38 pp.

[249] IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, 1435 pp. U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html* (last accessed June 14, 2016).

[250] ERG, 2015: *U.S. Jet Fuel Use and CO_2 Emissions Inventory for Aircraft Below ICAO CO_2 Standard Thresholds,* Final Report, EPA Contract Number EP–D–11–006, 38 pp.

For additional background information and context, we used 2012 WRI/CAIT and IEA data to make comparisons between the aircraft sector and the emissions inventories of entire countries and regions. When compared to entire countries, total global aircraft GHG emissions in 2012 ranked 8th overall, behind only China, United States, India, Russian Federation, Japan, Brazil, and Germany, and ahead of about 177 other countries. Total U.S. aircraft GHG emissions have historically been and continue to be by far the largest contributor to global aircraft GHG emissions. Total U.S. aircraft GHG emissions are about 6 times higher than aircraft GHG emissions from China, which globally is the second ranked country for aircraft GHG emissions, and about 4 times higher than aircraft GHG emissions from all of Asia. U.S. covered aircraft GHG emissions are about 5 times more than total aircraft GHG emissions from China, and about 4 times more than total aircraft GHG emissions from all of Asia. If U.S. covered aircraft emissions of GHGs were ranked against total GHG emissions for entire countries, these covered aircraft emissions would rank ahead of Belgium, Czech Republic, Ireland, Sweden, Switzerland and about 150 other countries in the world.

c. Aircraft GHG Emissions Are Projected To Increase in the Future

Global and U.S. covered aircraft GHG emissions have increased between 1990 and 2010, and are predicted to continue to increase in future years. While overall GHG emissions from U.S. covered aircraft increased by 12 percent from 1990 to 2010, the portion attributable to combustion of U.S. international aviation bunker fuels [251] increased by 91 percent.[252] During this same time period, global aircraft GHG emissions grew by 40 percent, and the portion attributable to combustion of global international aviation bunker fuels increased by 80 percent.[253] [254] Notwithstanding the substantial growth in GHG emissions from combustion of U.S. international aviation bunker fuels, U.S. covered aircraft emissions have not increased as much as global aircraft emissions from 1990 to 2010, primarily because the U.S. aviation market was relatively mature compared to the markets in Europe and other emergent markets, and because during this time period the U.S. commercial air carriers suffered several major shocks that reduced demand for air travel.[255] In fact, U.S. covered aircraft emissions decreased from 2000 to 2010 (13 percent), but then have increased from 2010 to 2014 (3 percent).[256] After consolidation and restructuring in recent years, the U.S. commercial air carriers have regained profitability and are forecasted by the FAA to grow more over the next 20 to 30 years.[257] With regard to global aircraft GHG emissions, the aviation markets in Asia/Pacific, Europe (where airline deregulation has stimulated significant new demands in this period), and the Middle East (and other emerging markets) have been growing rapidly, and the global market is expected to continue to grow significantly over the next 20 to 30 years.[258]

Recent studies estimate that both ICAO covered aircraft and U.S. covered aircraft will experience substantial growth over the next 20 to 30 years in their absolute fuel burn,[259] and that this will translate into increased GHG emissions. ICAO estimates that the global fuel burn from ICAO covered aircraft will increase by about 120 percent from 2010 to 2030 and by about 210 percent from 2010 to 2040 (for a scenario with moderate technology and operational improvements).[260] The FAA projects that the fuel consumption from U.S. air carriers and general aviation aircraft operating on jet fuel will grow by 43 percent from 2010 to 2036, corresponding to an average annual increase rate in fuel consumption of 1.4 percent.[261] These aircraft groups (U.S. air carriers and general aviation aircraft operating on jet fuel) are of similar scope to the U.S. covered aircraft whose engine GHG emissions are the subject of this contribution finding. Using fuel burn growth rates provided above as a scaling factor for growth in GHG emissions (globally and nationally), it is estimated that GHG emissions from ICAO covered aircraft and U.S. covered aircraft will increase at a similar rate as the fuel burn by 2030, 2036, and 2040.

C. Response to Key Comments on the Administrator's Cause or Contribute Finding

EPA received numerous comments regarding the Administrator's proposed cause or contribute finding. Below is a brief discussion of some of the key comments. Responses to comments on this topic (and further details for the key comments) are also contained in the Response to Comments document.

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[251] The U.S. international aviation bunker fuels category includes emissions from combustion of fuel used by aircraft departing from the United States, regardless of whether they are a U.S. flagged carrier. GHG emissions from U.S. international aviation bunker fuels are a subset of GHG emissions from U.S. covered aircraft. From 1990 to 2010, GHG emissions from U.S. covered aircraft increased from 171 to 191 Tg CO_2eq, and GHG emissions from the portion attributable to U.S. international aviation bunker fuels grew from 30 to 58 Tg CO_2eq during this same time period. From 1990 to 2011, GHG emissions from U.S. covered aircraft increased from 171 to 193 Tg CO_2eq (13 percent), and GHG emissions from the portion attributable to U.S. international aviation bunker fuels grew from 30 to 62 Tg CO_2eq (110 percent). From 1990 to 2012, GHG emissions from U.S. covered aircraft increased from 171 to 190 Tg CO_2eq (11 percent), and GHG emissions from the portion attributable to U.S. international aviation bunker fuels grew from 30 to 62 Tg CO_2eq (110 percent).

[252] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html* (last accessed June 14, 2016).

[253] IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, pp. 599–670.

[254] According to IEA, from 1990 to 2012, global aircraft GHG emissions grew by 53 percent, and global international aviation bunker fuels increased by 86 percent. International Energy Agency Data Services, Available at *http://data.iea.org* (last accessed January 21, 2016).

[255] According to the *FAA Aerospace Forecast 2014–2034,* these shocks include the September 11, 2001, terror attacks, significant increases in fuel prices, debt restructuring in Europe and U.S., and a global recession. FAA, 2014: *FAA Aerospace Forecast Fiscal Years 2014–2034,* 129 pp. Available at *http://www.faa.gov/data_research/aviation/aerospace_forecasts/media/2014_faa_aerospace_forecast.pdf* (last accessed April 8, 2016).

[256] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html* (last accessed June 14, 2016).

[257] According to the *FAA Aerospace Forecast 2016–2036,* in 2015 U.S. air carriers were profitable for the sixth consecutive year.

FAA, 2016: *FAA Aerospace Forecast Fiscal Years 2016–2036,* 94 pp. Available at *https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_Aerospace_Forecast.pdf* (last accessed March 29, 2016).

[258] According to the *FAA Aerospace Forecast 2014–2034,* the International Air Transport Association (IATA) reports that world air carriers (including U.S. airlines) are expected to register an operating profit for 2013. Based on financial data compiled by ICAO and IATA, between 2004 and 2013 world airlines produced cumulative operating profits (with nine years out of ten posting gains) and net profits (with six years out of ten posting gains).

[259] FAA, 2016: *FAA Aerospace Forecast Fiscal Years 2016–2036,* 94 pp. Available at *https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_Aerospace_Forecast.pdf* (last accessed March 29, 2016).

ICAO CAEP, 2013: *ICAO Environmental Report 2013, Aviation and Climate Change,* 224 pp. Available at *http://cfapp.icao.int/Environmental-Report-2013/* (last accessed April 8, 2016).

[260] ICAO CAEP, 2013: *ICAO Environmental Report 2013, Aviation and Climate Change,* 224 pp. Available at *http://cfapp.icao.int/Environmental-Report-2013/* (last accessed April 8, 2016).

[261] FAA, 2016: *FAA Aerospace Forecast Fiscal Years 2016–2036,* 94 pp. Available at *https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_Aerospace_Forecast.pdf* (last accessed March 29, 2016).

1. The Administrator Reasonably Defined the Scope of the Cause or Contribute Finding

a. Applicability Weight Thresholds Match Those of International CO_2 Standard

Several commenters stated that the EPA should undertake another cause or contribute finding for a broader range of aircraft not covered in our proposed finding, including smaller turboprop aircraft (such as the Beechcraft King Air 350i), smaller jet aircraft (such as the Cessna Citation M2), piston-engine aircraft, and helicopters. These commenters stated, however, that this comment did not affect the validity of the conclusions in the proposed finding. Numerous commenters stated their support for our proposed finding's scope matching the applicability (weight or MTOM) thresholds of the international CO_2 standard.

As described earlier, at this time and for the purposes of this cause or contribute finding under CAA section 231(a)(2)(A), the EPA is including emissions of the six well-mixed greenhouse gases from classes of engines used in U.S. covered aircraft which are subsonic jet aircraft with a maximum takeoff mass (MTOM) greater than 5,700 kilograms and subsonic propeller driven (*e.g.,* turboprop) aircraft with a MTOM greater than 8,618 kilograms. We are not at this time taking final action with respect to the GHG emissions from aircraft other than those included in the scope of this finding.[262] The cause or contribute finding is a prerequisite under CAA section 231 for EPA to adopt standards that are of at least equivalent stringency to those set by ICAO. Accordingly, in this finding, the EPA is focusing on matching the scope of our contribution finding to the applicability thresholds of the international standard. The covered aircraft match the applicability (or MTOM) thresholds of the international aircraft CO_2 standard. This is a reasonable approach for this first finding regarding the contribution of aircraft GHG emissions to the endangering air pollution, as the vast majority of U.S. emissions from all classes of aircraft engines (89 percent of U.S. aircraft GHG emissions) will be covered by this scope of applicability, which corresponds to 26 percent of global aircraft GHG emissions. This approach is also consistent with our past practice in promulgating aircraft engine NO_X standards. In ruling on a petition for judicial review of the 2005 rule for further stringency of aircraft engine NO_X standards,[263] the D.C. Circuit held that the EPA's approach in that action of tracking the applicability criteria of the ICAO standards was reasonable and permissible under the CAA. *NACAA* v. *EPA,* 489 F.3d 1221, 1230–32 (D.C. Cir. 2007). (The Court also held that section 231 of the CAA confers a broad degree of discretion on the EPA to adopt aircraft emission standards that the Agency determines are reasonable. *Id.*) Also, by using the phrase "any class or classes of aircraft engines which in [her] judgment causes, or contributes to," the endangering air pollution, section 231(a)(2)(A) gives the EPA discretion to determine which class or classes of aircraft engines to evaluate in making a cause or contribute finding, and whether to focus on a single class or multiple classes of aircraft engines in satisfying the requirements of section 231(a)(2)(A).

In response to the commenters who asked the EPA to undertake an additional cause and contribute finding regarding GHG emissions from non-covered U.S. aircraft, the Agency will take that request under advisement and consideration among its other duties and priorities, but is not prepared at this time to either reject or grant that request. At this point, given the nearly complete process for ICAO's adoption of an international standard, which will under the Chicago Convention trigger the duties of the U.S. and other member states to adopt domestically standards that are of at least equal stringency, it is most important for the EPA to prepare for having to meet that nearly certain duty by expeditious completion of the pre-requisite endangerment and cause or contribute findings, without possibly delaying final action to consider the possibility of proposing a broader cause or contribute finding before taking final action.

b. The Administrator Reasonably Defined U.S. Covered Aircraft

A commenter stated that they understand that the scope of the finding corresponds to the aircraft engine GHG emissions that are from aircraft that match the applicability thresholds (or MTOM thresholds) for the international aircraft CO_2 standard; however, they requested clarification on the difference between "U.S. covered aircraft" and non-U.S. covered aircraft. This commenter requested clarification on whether U.S. covered aircraft means aircraft made in the U.S., registered in the U.S., operated by an entity holding an air carrier certificate issued by the U.S., operated by an air carrier in the National Air Space, or operated by anyone in the U.S. (National) Air Space. The commenter expressed that the EPA must explain the basis for its definition, and its claimed authority to regulate U.S. covered aircraft.

As described earlier in section V.B.4, U.S. covered aircraft for this cause or contribute finding refers to aircraft that are a subset of all aircraft that meet the applicability thresholds of the international aircraft CO_2 standard, namely those that fly domestically with starting and ending points within the U.S. and those that depart the U.S. for international destinations. U.S. covered aircraft include aircraft that operate in the U.S., and thus contribute to GHG emissions in the U.S. This includes emissions from U.S. domestic flights of these aircraft. In addition, the scope of this finding reaches GHG emissions from non-military aircraft combusting U.S. international bunker fuels departing the U.S., regardless of whether they are a U.S. flagged carrier—also described as emissions from combustion of U.S. international bunker fuels.[264] Similar to statements earlier in section V.B.4, in defining U.S. covered aircraft for this specific contribution finding, in advance of needing to meet the expected duties imposed by the ICAO standards, the EPA is focused on the GHG emissions that the atmosphere receives as a result of aviation activities occurring inside the U.S. and originating from the U.S., in order to capture the full contribution of covered aircraft to U.S. GHG emissions, consistent with the scope of the ICAO international standard. It is important for the EPA's finding to reach the subset of aircraft that meet the definition of U.S. covered aircraft, and that subset will not necessarily be covered by any other member state with responsibilities to meet the ICAO standard under the Chicago Convention. For U.S. covered aircraft, the EPA has chosen to combine GHG emissions from all flights both domestic and those reflected in international bunker fuel inventories to determine the contribution of U.S. covered aircraft GHG emissions to the endangering air pollution. We additionally note that the IPCC and UNFCCC guidance states that for an international bunker flight the entire flight's emissions are calculated and reported (for the country from where the flight departed), and the GHG emission calculation methodologies are the same for both domestic and international aviation bunker fuel flights. We have followed this guidance in our calculation methodologies for this contribution finding.[265] Ultimately, GHG emissions inventories from U.S. covered aircraft with or without GHG emissions from combustion of U.S. international aviation bunker fuels are sufficient to support the Administrator's cause or contribute finding in this action, whether we consider the inventories both together, or just the inventory from domestic flights of U.S. covered aircraft.

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[262] Consequently, this final action does not restrict the EPA's future discretion to address GHG emissions from aircraft that are not included in the scope of this finding, or prejudge how the Agency would respond to a petition to address those GHG emissions should one be submitted in the future.

[263] U.S. EPA, 2005: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule,* 70 FR 69664 (November 17, 2005).

In 2005, we promulgated more stringent NO_X emission standards for newly certified commercial turbofan engines. That final rule brought the U.S. standards closer to alignment with ICAO CAEP/4 requirements that became effective in 2004.

[264] For example, a flight departing Los Angeles and arriving in Tokyo—regardless of whether it is a U.S. flagged carrier—is considered a U.S. international bunker flight. A flight from London to Hong Kong is not.

In response to the comment that EPA must explain its claimed authority to regulate U.S. covered aircraft, as described earlier, the endangerment and cause or contribute findings are a prerequisite under CAA section 231(a)(2)(A) for EPA to adopt standards (that are of at least equivalent stringency to those set by ICAO). If the Administrator makes these findings in the affirmative, she must issue standards under section 231(a)(2)(A).

c. It Is Reasonable for the Administrator To Limit the Contribution Finding to U.S. Covered Aircraft

Some commenters stated that the EPA should issue a broader contribution finding and wait until the standard setting phase to exercise discretion as to what classes of aircraft engines should be covered by standards. These commenters stated that the EPA has authority to set aircraft engine GHG emission standards, following a cause or contribute finding, that do not impose requirements on every engine or class of aircraft engine within the scope of that finding. They also argued that in this instance there does not seem to be a sufficiently reasoned basis for EPA to exclude the non-covered aircraft for purposes of making the cause or contribute finding.

As described earlier in section III, the endangerment and contribution findings for aircraft GHG emissions under section 231(a)(2)(A) of the CAA are a necessary first step to begin to address GHG emissions from the aviation sector, the highest-emitting category of transportation GHG sources that the EPA has not yet addressed. As presented in more detail in section V.B.4 of this preamble, covered U.S. aircraft GHG emissions in 2014 represented 10 percent of GHG emissions from the U.S. transportation sector,[266] and in 2010, the latest year with complete global emissions data, U.S. covered aircraft GHG emissions represented 26 percent of global aircraft GHG emissions.[267] [268] U.S. covered aircraft GHG emissions are projected to increase by 43 percent over the next two decades.[269]

Section III of this preamble summarizes the legal framework for this action under CAA section 231. As discussed there, section 231(a)(2)(A) of the CAA states that "The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in [her] judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare." Before the Administrator may issue standards addressing emissions of GHGs under section 231, the Administrator must satisfy a two-step test. First, the Administrator must decide whether, in her judgment, the air pollution under consideration may reasonably be anticipated to endanger public health or welfare. Second, the Administrator must decide whether, in her judgment, emissions of an air pollutant from the classes of aircraft engines under consideration cause or contribute to this air pollution.[270] If the Administrator answers both questions in the affirmative, she must issue standards under section 231. While we agree that the EPA has significant discretion in the standard-setting phase, we disagree with the comment to the extent that it suggests the standard-setting phase is the only appropriate place for the EPA to exercise discretion as to the scope of covered aircraft engine classes in this first instance of findings regarding aircraft GHG emissions. By using the phrase "any class or classes of aircraft engines which in [her] judgment causes, or contributes to," the endangering air pollution, section 231(a)(2)(A) gives the EPA discretion to determine which class or classes of aircraft engines to evaluate in making a cause or contribute finding, and whether to focus on a single class or multiple classes of aircraft engines in satisfying the requirements of section 231(a)(2)(A). Because the scope of the first international CO_2 standard adopted by ICAO is limited to aircraft over the specified MTOM levels, and the U.S. will have a duty to set domestic standards in order to meet its obligations under the Chicago Convention, it is reasonable in this case to similarly limit the scope of and issue this first aircraft GHG contribution finding and not delay this determination in order to possibly additionally consider and re-propose our finding to reach a broader scope. We do not necessarily disagree with the commenters who suggested that we could issue a broader contribution finding and then narrow the scope of future standards at that stage, but doing so in this action would require further analysis and development of an additional proposed finding, which could impede expeditious final issuance of the finding we proposed and thereby possibly impede prompt development of domestic standards that are of at least equivalent stringency as ICAO's. We expect to proceed with promulgating a domestic CO_2 standard (or GHG standard) of at least equivalent stringency to the international CO_2 standard as soon as it is practicable, and to begin to take action along this expected path, we are exercising our discretion in matching the applicability thresholds of the international CO_2 standard. The majority of the GHG emissions from all classes of aircraft engines would be covered by these applicability thresholds. We are not making either positive or negative contribution findings regarding GHG emissions from engines used in non-covered aircraft at this time, but nothing prevents us from doing so in the future.

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[265] As described earlier, following the IPCC guidelines for common and consistent accounting and reporting of GHGs, the UNFCCC requires countries to report both total national GHG emissions and international bunker fuel emissions (aviation and marine international bunker fuel emissions), and though these emissions are reported separately, both are assigned to the reporting country. In meeting the UNFCCC reporting requirements, the U.S. Inventory calculates international bunker fuel GHG emissions in a consistent manner with domestic GHG emissions. In this final contribution finding, the EPA maintains its approach used in the proposed findings to include aviation international bunker fuel emissions attributable to the United States with the national emissions number from the U.S. Inventory as reported to the UNFCCC. It is the EPA's view that it is reasonable and appropriate for the analysis in the contribution finding to reflect the full contribution of U.S. emissions from certain classes of aircraft engines, including those from domestic flights of U.S. aircraft and those associated with international aviation bunker fuel emissions. Consistent with IPCC guidelines for common and consistent accounting and reporting of GHGs under the UNFCCC, the "U.S. international aviation bunker fuels" category includes emissions from combustion of fuel used by aircraft departing from the United States, regardless of whether they are a U.S. flagged carrier.

[266] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html* (last accessed June 14, 2016).

[267] Ibid.

[268] IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change.* Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, 599–670 pp.

[269] As discussed in section V.B.4.c, fuel burn growth rates for air carriers and general aviation aircraft operating on jet fuel are projected to grow by 43 percent from 2010 to 2036, and this provides a scaling factor for growth in GHG emissions which would increase at a similar rate as the fuel burn by 2030, 2036, and 2040. FAA, 2016: *FAA Aerospace Forecast Fiscal Years 2016–2036,* 94 pp. Available at *https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_Aerospace_Forecast.pdf* (last accessed March 29, 2016).

[270] To clarify the distinction between air pollution and air pollutant, the air pollution is the atmospheric concentrations and can be thought of as the total, cumulative stock of GHGs in the atmosphere. The air pollutants, on the other hand, are the emissions of GHGs and can be thought of as the flow that changes the size of the total stock.

2. The Administrator's Cause or Contribute Analysis Is Reasonable

a. It Is Reasonable To Include GHG Emissions From Combustion of International Aviation Bunker Fuels in the U.S. Aircraft GHG Inventory

Some commenters stated that the EPA's choice of data for the cause or contribute analysis was selective and biased. They contended that emissions resulting from combustion of the international aviation bunker fuels should not be part of the U.S. covered aircraft GHG inventory or of the total U.S. aircraft GHG inventory, since the EPA's own U.S. inventory for UNFCCC reporting purposes does not include emissions from combustion of these fuels in the national GHG totals and reports them separately to the UNFCCC, pursuant to UNFCCC inventory reporting guidelines.[271] Consequently, they asserted that the total emissions from domestic commercial aircraft accounts for less than 2 percent (1.7%) of total U.S. aircraft GHG emissions. Because of this, commenters believe that EPA inappropriately specified that the U.S. covered aircraft GHG emissions represent 3 percent of the total U.S. GHG emissions.

The EPA disagrees with this comment. As stated earlier in this section, U.S. covered aircraft GHG emissions[272] (and total U.S. aircraft GHG emissions) in this cause or contribute finding include those GHG emissions resulting from combustion of international aviation bunker fuel because we want to capture the full contribution of GHG emissions from aircraft that are attributable to covered aircraft activity in or originating from the U.S. In tracking aircraft GHG emissions, the EPA is focused on the U.S.'s contributions from this sector to the atmosphere. Accordingly, the EPA includes GHG emissions for all aircraft departing from U.S. airports in a calendar year (domestic and international flights) in determining total U.S. GHG emissions and total U.S. aircraft GHG emissions. Thus, consistent with that practice, for assessing GHG emissions from U.S. covered aircraft, EPA has chosen to combine all flights, both those with domestic takeoff and landing points, and those with domestic takeoff points and international landing points. In addition, guidance from the IPCC and UNFCCC states that for an international bunker fuel-combusting flight the entire flight's emissions are calculated and reported, and the GHG emission calculation methodologies are the same for both domestic and international bunker fuel-combusting flights. The U.S. calculates and reports emissions resulting from combustion of international bunker fuels in accordance with this guidance. However, pursuant to UNFCCC reporting guidelines, emissions from combustion of international bunker fuels are reported separately from other aircraft emissions in the U.S. Inventory, in order to meet the reporting commitments under the UNFCCC. We follow the IPCC and UNFCC guidance in our calculation and reporting methodologies.[273]

b. The Administrator Does Not Need To Find Significant Contribution, or Establish a Bright Line

One comment letter stated that aircraft GHG emissions are extremely small relative to both domestic and global GHG emissions in the aggregate, and questioned whether there is a reasoned basis for EPA to find that GHG emissions from U.S. aircraft cause or contribute to air pollution that endangers public health and welfare when assessed not only relative to contributions from other sectors, but also relative to climate impacts. For example, this commenter indicated the EPA estimates that total U.S. aircraft GHG emissions accounted for about 0.5 percent of total global GHG emissions in 2010. Thus, the commenter stated that the total U.S. aircraft GHG emission contributions from the U.S. aviation sector are extremely small relative to total global GHG emissions, or negligible as a percentage of total global GHG emissions.

The EPA disagrees with this comment and has fully explained the reasoning for this contribution finding in section V.B. In addition, the Administrator interprets CAA section 231(a)(2)(A) to require some level of contribution that, while more than *de minimis* or trivial, does not need to rise to the level of significance to support a contribution finding. By its terms, section 231(a)(2)(A) does not contain a modifier on its use of the term "contribute," which contrasts with some other provisions of the CAA, such as sections 213(a)(2) and (4), and 110(a)(2)(D)(i)(I), that expressly require a "significant" contribution. The Administrator's interpretation is consistent with the interpretation of parallel language in CAA section 202(a), which was described in the 2009 Findings,[274] and is also supported by past court decisions. For example, the D.C. Circuit's opinion in *Catawba County* v. *EPA,* 571 F.3d 20 (D.C. Cir. 2009), discusses the concept of contribution in the area designations context under section 107(d)(1)(A), which, like section 231(a)(2)(A), does not include the term "significant" to modify "contribute." This decision, along with others, supports the Administrator's interpretation that CAA section 231(a)(2)(A) does not require a significant contribution, but rather, in the absence of specific language regarding the degree of contribution, provides the EPA discretion such that a positive finding may be based on a determination that the air pollutant emissions from the relevant class or classes of aircraft engines merely "contribute to" the air pollution which may reasonably be anticipated to endanger public health or welfare. In addition, similar to the interpretation of section 202(a) described in the 2009 Findings, the Administrator is not required under section 231(a)(2)(A) to establish a bright-line, objective test for contribution, but is to exercise her judgment in determining contribution.[275] As explained above, and similar to the approach used in the 2009 Findings, when exercising her judgment under section 231(a)(2)(A), in this context the Administrator considers both the cumulative impact and also the totality of the circumstances. It is reasonable for the Administrator to apply a "'totality-of-the-circumstances test to implement a statute that confers broad discretionary authority, even if the test lacks a definite 'threshold' or 'clear line of demarcation to define an open-ended term.'" *Id.* at 39 (citations omitted).

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[271] EPA GHG Emissions Inventory at A–31 (reporting and methods) is available at: *http://www.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2015-Annex-2-Emissions-Fossil-Fuel-Combustion.pdf* (last accessed April 8, 2016).

[272] As described earlier in section V.B.4, U.S. covered aircraft do not include military aircraft that use U.S. international aviation bunker fuels.

[273] As described earlier, following the IPCC guidelines for common and consistent accounting and reporting of GHGs, the UNFCCC requires countries to report both total national GHG emissions and international bunker fuel emissions (aviation and marine international bunker fuel emissions), and though these emissions are reported separately, both are assigned to the reporting country. In meeting the UNFCCC reporting requirements, the U.S. Inventory calculates international bunker fuel GHG emissions in a consistent manner with domestic GHG emissions.

In this final contribution finding, the EPA maintains its approach used in the proposed findings to include aviation international bunker fuel emissions attributable to the United States with the national emissions number from the U.S. Inventory as reported to the UNFCCC. It is the EPA's view that it is reasonable and appropriate for the analysis in the contribution finding to reflect the full contribution of U.S. emissions from certain classes of aircraft engines, including those from domestic flights of U.S. aircraft and those associated with international aviation bunker fuel emissions. Consistent with IPCC guidelines for common and consistent accounting and reporting of GHGs under the UNFCCC, the "U.S. international aviation bunker fuels" category includes emissions from combustion of fuel used by aircraft departing from the United States, regardless of whether they are a U.S. flagged carrier.

[274] 74 FR at 66541–42.

In *Catawba County* the D.C. Circuit upheld the EPA's $PM_{2.5}$ area designation decisions and analyzed CAA section 107(d), which requires the EPA to designate an area as nonattainment if it "contributes to ambient air quality in a nearby area" not meeting the national ambient air quality standards. *Id.* at 35. CAA section 107(d)(1), as mentioned above, like section 231(a)(2)(A), does not use the term "significant" in establishing this duty, or set forth any other bright-line benchmark that must be met for the EPA to find "contribution." The court noted that it had previously held that the term "contributes" is ambiguous in the context of CAA language. *See EDF* v. *EPA,* 82 F.3d 451, 459 (D.C. Cir. 1996). "[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion." 571 F.3d at 35 (citing *Nat'l Cable & Telecomms. Ass'c* v. *Brand X Internet Servs,* 545 U.S. 967, 980 (2005)).

The D.C. Circuit then proceeded to consider and reject petitioners' argument that the verb "contributes" in CAA section 107(d) necessarily connotes a significant causal relationship. Specifically, the court again noted that the term is ambiguous, leaving it to the EPA to interpret in a reasonable manner. In the context of this discussion, the court noted that "a contribution may simply exacerbate a problem rather than cause it . . ." 571 F.3d at 39. This is consistent with the D.C. Circuit's decision in *Bluewater Network* v. *EPA,* 370 F.3d 1 (D.C. Cir. 2004), in which the court, in evaluating EPA's judgment that emissions from a specific class or category of nonroad engines contribute to air pollution for which findings of "significant" contribution had already been made with respect to nonroad engines' emissions in the aggregate, noted that the term "contribute" in CAA section 213(a)(3) "[s]tanding alone, . . . has no inherent connotation as to the magnitude or importance of the relevant 'share' in the effect; certainly it does not incorporate any 'significance' requirement." 370 F.3d at 13. In that context, the court found that the bare term "contribute" invests the Administrator with discretion to exercise judgment regarding what constitutes a sufficient contribution for the purpose of making a contribution finding. *Id.* at 14.

Finally, in *Catawba County,* the D.C. Circuit also rejected "petitioners' argument that the EPA violated the statute by failing to articulate a quantified amount of contribution that would trigger" the regulatory action. 571 F.3d at 39. Although petitioners preferred that the EPA establish a bright-line test, the court recognized that the statute did not require that EPA "quantify a uniform amount of contribution." *Id.*

Given this context, it is entirely reasonable for the Administrator to interpret CAA section 231(a)(2)(A) to require some level of contribution that, while more than *de minimis* or trivial, need not be significant. It is also reasonable for the EPA to find contribution without establishing a "bright-line 'objective' test of contribution." 571 F.3d at 39. As in the 2009 Endangerment Finding, when exercising her judgment under CAA section 231(a)(2)(A), the Administrator not only considers the cumulative impact, but also looks at the totality of the circumstances (*e.g.,* the air pollutant, the air pollution, the nature of the endangerment, the type of source category, the number of sources in the source category, and the number and type of other source categories that may emit the air pollutant) when determining whether the emissions justify regulation under the CAA. *See id.* (finding it reasonable for an agency to adopt a totality-of-the-circumstances test under similar circumstances). In the context of GHG emissions, which come from many different sectors no single one of which is primarily responsible as their source, and which aggregate together into a common pollution stock that itself impacts public health and welfare, it is particularly reasonable to address those emissions from contributing sectors, even if looked at individually a sector may not be considered dominant. Therefore, in the specific context of making a contribution finding regarding GHG emissions from aircraft engines under CAA section 231, it is reasonable for the EPA to interpret that provision to not require some level of contribution that rises to a pre-determined numerical level or percentage- or mass-based portion of the overall endangering GHG air pollution.

In addition, the EPA disagrees with the assertion that we do not have a reasoned basis to make this contribution finding. As described earlier in section V.B.4, the collective GHG emissions from the classes of engines used in U.S. covered aircraft (197 Tg CO2eq) clearly contribute to the endangering GHG air pollution, whether the comparison is domestic (89 percent of total U.S. aircraft GHG emissions, 10 percent of all U.S. transportation GHG emissions, representing 2.8 percent of total U.S. GHG emissions), global (26 percent of total global aircraft GHG emissions representing 2.7 percent of total global transportation GHG emissions and 0.4 percent of all global GHG emissions), or a combination of domestic and global. Both domestic and global comparisons, independently and jointly, support the finding. Moreover, these comparisons also support the finding even if GHG emissions from combustion of U.S. international aviation bunker fuels are excluded. Making this cause or contribute finding for engines used in U.S. covered aircraft will result in the vast majority of total U.S. aircraft GHG emissions being included in this determination.

Also, even if the EPA were required to determine that a contribution met or exceeded a level of significance to make a contribution finding, for the reasons discussed above, the EPA would find that the contribution to the U.S. and global stocks of GHG air pollution from GHG emissions from classes of engines used in U.S. covered aircraft is significant. As discussed in more detail above, their GHG emissions are larger than those from the great majority of emitting countries, they are larger than those of several major emitting countries, and they constitute one of the largest remaining unregulated contributing parts of the U.S. GHG emissions inventory.

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[275] 74 FR at 66542.

Finally, in response to the suggestion in the comments that a positive contribution finding is not supportable unless the EPA finds that GHG emissions from covered aircraft themselves cause climate impacts, without consideration of the impacts caused by the larger aggregate stock of GHG air pollution, we stress that the comment conflates the endangerment and contribution steps of the analysis. In making the contribution finding, the EPA need not additionally and separately find whether the contribution alone causes endangerment. That endangerment finding has already been made with respect to the stock of GHG air pollution to which covered aircraft GHG emissions contribute. The only remaining issue at the second step of the analysis is whether the analyzed GHG source sector in fact emits GHG air pollutants that contribute to the air pollution that has already been found to endanger public health and welfare. The covered aircraft, as we have shown and explained, clearly do emit GHG air pollutants that measurably contribute to that stock.

c. The Administrator Reasonably Provided Context in Comparing Aircraft GHG Emissions to Other Sector GHG Emissions

Some commenters asserted that the EPA did not show important context in comparing covered aircraft GHG emissions to other mobile source categories' GHG emissions. The EPA does not describe the very low level of aircraft emissions in general relative to emissions from other sources. The commenters assert that, for example, the EPA does not point out that the growth in emissions from U.S. medium-duty and heavy-duty trucks since 1990 is 53 percent greater than the GHG emissions from the U.S. commercial aircraft sector today, and 18 percent higher than the total U.S. aircraft (or entire U.S. aviation sector) GHG emissions today.

In the proposed finding and this final finding, the EPA provides context for covered aircraft GHG emissions relative to other sectors' GHG emissions, including other categories within the transportation sector. As described earlier in section V.B.4, from a national perspective, the EPA provided tables to compare total U.S. aircraft and U.S. covered aircraft GHG emissions to U.S. transportation and total U.S. inventory GHG emissions, over an extended timeframe (1990–2014). We also noted that overall U.S. covered aircraft comprised the third largest source of GHG emissions in the U.S. transportation sector behind only the light-duty vehicle sector and medium- and heavy-duty truck sectors. This is the same ranking as total U.S. aircraft, if U.S. covered aircraft and total U.S. aircraft are compared to the other transportation sectors independent of one another. Finally, we note that the U.S. inventory also shows that while overall U.S. GHG emissions grew between 1990 and 2014, transportation GHG emissions grew at a notably higher rate, 16 percent, more rapidly than any other U.S. sector. U.S. covered aircraft GHG emissions grew by 15 percent in this time period.[276] Within the transportation sector, aircraft remain the single largest source of GHG emissions not yet subject to any GHG standards.

In our proposal and again in this finding in section V.B.4, the Administrator also stated her concern that recent projections indicate that by 2036 GHG emissions both from all aircraft and from U.S. covered aircraft are likely to increase by 43 percent (from 191 Tg CO_2eq to 272 Tg CO_2eq for the years 2010 to 2036).[277] This was contrasted with projections of GHG emissions changes in other transportation sectors in the same timeframe. For example, projections estimate that by 2036 the light-duty vehicle sector is projected to see a 25 percent reduction in GHG emissions (from 1,133 Tg CO_2eq to 844 Tg CO_2eq) from the 2010 baseline, while the freight trucks sector is projected to experience a 23 percent increase in GHG emissions (from 390 Tg CO_2eq to 478 Tg CO_2eq) from the 2010 baseline. (However, this projected increase does not reflect the impact of GHG reductions on the freight trucks sector anticipated from the Phase 2 heavy-duty GHG standards that have not yet been promulgated.) In addition, by 2036 the rail sector is projected to experience a 3 percent reduction in GHG emissions (44 Tg CO_2eq to 43 Tg CO2eq) from the 2010 baseline.[278] Therefore, in the context of projected growth it appears that U.S. covered aircraft GHG emissions through 2036 are estimated to increase by more than 80 Tg CO2eq.[279] [280]

Also, the EPA provided a global perspective by showing how total U.S. aircraft and U.S. covered aircraft GHG emissions compare to global aircraft, global transport, and total global GHG emissions. In addition, the EPA shows the ranking of the total U.S. aircraft and U.S. covered GHG emissions relative to other global transportation sectors and entire country GHG emissions.

One commenter stated that it is inappropriate and misleading to compare U.S. aircraft GHG emissions with those of other, individual countries. They indicated that to fairly compare the U.S. airlines' GHG emissions contribution, EPA should analyze, as ICAO does, contributions from other world regions with comparable land masses and levels of economic activity. (In terms of landmass, the U.S. ranks third globally, behind only Russia and Canada.) The EPA disagrees with this comment. The language of CAA section 231(a)(2)(A) is silent regarding how the Administrator is to make her contribution analysis. While it requires that the Administrator assess whether emissions of an air pollutant cause or contribute to air pollution which may reasonable be anticipated to endanger public health or welfare, it does not limit how she may undertake that assessment. It surely is reasonable that the Administrator look at how total U.S. aircraft GHG emissions and U.S. covered aircraft GHG emissions compare to U.S. and global GHG emissions on an absolute and relative basis, including ranking compared to other transportation sectors and entire country emissions. It is entirely appropriate for the Administrator to decide that part of understanding how a U.S. source category emitting GHGs fits into the bigger picture of global climate change is to determine how that source category fits into the contribution from the United States as a whole (including U.S. transportation and total U.S. inventory GHG emissions), where the United States as a country is a major emitter of GHGs. Knowing how total U.S. aircraft GHG emissions and U.S. covered aircraft GHG emissions rank compared to entire country GHG emissions is relevant to understanding what role they play in the global problem and hence whether they "contribute" to the global problem. Moreover, the Administrator is looking at these emissions comparisons as appropriate under the applicable science, facts, and law. Therefore, the EPA appropriately compared and provided sufficient context for total U.S. aircraft GHG emissions and U.S. covered aircraft GHG emissions.

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[276] Total U.S. aircraft GHG emissions decreased by 3 percent from 1990 to 2014. U.S. non-covered aircraft GHG emissions decreased by 56 percent in this same time period.

[277] As discussed in section V.B.4.c, fuel burn growth rates for air carriers and general aviation aircraft operating on jet fuel are projected to grow by 43 percent from 2010 to 2036 and this provides a scaling factor for growth in GHG emissions which would increase at a similar rate as the fuel burn by 2030, 2036, and 2040.

FAA, 2016: *FAA Aerospace Forecast Fiscal Years 2016–2036,* 94 pp. Available at *https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_Aerospace_Forecast.pdf* (last accessed March 29, 2016).

[278] U.S. Energy Information Administration (EIA), 2015: *Annual Energy Outlook (AEO) 2015 with projections to 2040,* DOE/EIA–0383, 154 pp. For the years 2010 to 2014, the baseline emissions for each sector are from the 2016 *Inventory of U.S. Greenhouse Gas Emissions and Sinks Report,* and after 2014 we utilize projections from the 2015 EIA AEO report. Available at *http://www.eia.gov/forecasts/aeo/* (last accessed April 8, 2016).

[279] As described earlier in section V.B.3, in 2010, U.S. covered aircraft were 10 percent of U.S. transportation sector GHG emissions, and in 2036, U.S. covered aircraft are projected to be 15 percent of U.S. transportation GHG emissions. In 2010, light-duty vehicles were 58 percent of U.S. transportation GHG emissions, and in 2036 they are projected to be 46 percent. In 2010, heavy-duty vehicles were 20 percent of U.S. transportation GHG emissions, and in 2036, they are projected to be 26 percent (does not reflect the impact from the Phase 2 heavy-duty GHG standards that have not been promulgated). In 2010, the rail sector was 2 percent of U.S. transportation GHG emissions, and in 2036, they are projected to be the same percentage.

[280] Some commenters stated that section 231(a)(2)(A) of the CAA does not give the EPA the authority to legally base the contribution finding on future emission projections. As described earlier in section V.B, the EPA considered future emission projections as information to further support our assessment of annual actual emissions (recent emissions from the current fleet) for the contribution finding.

d. The Administrator Reasonably Utilized Multiple Databases for Global GHG Emissions

Some commenters stated that the mix of data from different years utilizing emissions data from IPCC, WRI/CAIT, and IEA was confusing and potentially misleading. The EPA acknowledges that we presented data from a variety of sources, but the EPA does not agree that the analysis and presentation was misleading. We note that the global analysis for this covered aircraft contribution finding is consistent with the analytical approach originally developed and used in the 2009 Endangerment Finding. As described earlier in section IV.A, in the proposed finding and this final finding, the Administrator considers the recent, major scientific assessments of the IPCC, USGCRP, and the NRC as the primary scientific and technical basis informing her judgment. Thus, the Administrator is informed by and places considerable weight upon the IPCC's data on global GHG emissions. She places less emphasis on the WRI/CAIT and IEA emissions data, which in comparison have a different aggregation of underlying data but are available for more recent years (in comparison to the IPCC data). As described earlier in section V.B.4, the WRI/CAIT data are generally in line with the IPCC data. For 2010 total global GHG emissions, IPCC data are 49,000 Tg CO_2eq, and WRI/CAIT indicates 42,968 Tg CO_2eq (a 12 percent difference).[281] Also, for 2010 global aircraft GHG emissions, IPCC data are 743 Tg CO_2eq, and IEA data indicate 749 Tg CO_2eq (a 1 percent difference).[282]

The approach of considering the major scientific assessments, including IPCC's assessment, provides assurance that the Administrator's judgment is informed by the best available, well-vetted science that reflects the consensus of the climate science research community. The major findings of the assessments, including IPCC's assessment, support the Administrator's findings in this action. While the EPA uses the IPCC data as the primary data source for this contribution finding, it has reasonably used additional data sources from widely used and recognized global datasets to provide context and information from more recent years. These additional data supplement and confirm the IPCC data. Ultimately, whether the Agency utilizes the IPCC data alone or the WRI/CAIT dataset (and IEA data) alone, or both datasets together, it would have no material effect on the emissions comparisons discussed in section V.B and the Administrator would make the same contribution finding.

VI. Statutory Authority and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action because it raises novel policy issues. Accordingly, it was submitted to the Office of Management and Budget (OMB) for review. This action finalizes a finding that GHG emissions from aircraft cause or contribute to air pollution that may be reasonably anticipated to endanger public health and welfare. Any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. The endangerment and cause or contribute findings under CAA section 231(a)(2)(A) do not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The endangerment and cause or contribute findings under CAA section 231(a)(2)(A) do not in-and-of-themselves impose any new requirements but rather set forth the Administrator's determination that GHG emissions from certain classes of aircraft engines—those used in U.S. covered aircraft—cause or contribute to air pollution that may be reasonably anticipated to endanger public health and welfare. Accordingly, this action affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the findings.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. The final endangerment and cause or contribute findings under CAA section 231(a)(2)(A) do not in-and-of-themselves impose any new requirements but rather set forth the Administrator's determination that GHG emissions from certain classes of aircraft engines—those used in U.S. covered aircraft—cause or contribute to air pollution that may be reasonably anticipated to endanger public health and welfare. Thus, Executive Order 13175 does not apply to this action.

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[281] Comparing their 2010 total global GHG emissions, IPCC data are 49,000 Tg CO_2eq, and WRI/CAIT data, including forestry and land use inventories, indicates 45,748 Tg CO_2eq (a 7 percent difference).

[282] Comparing 2012 WRI/CAIT to 2010 IPCC data, WRI/CAIT data for total global GHG emissions indicates 44,816 Tg CO_2eq for 2012 (a 9 percent difference), and including forestry and land use inventories WRI/CAIT data indicates 47,599 Tg CO_2eq for 2012 (a 3 percent difference). Comparing 2012 IEA data to 2010 IPCC data, IEA data for global aircraft GHG emissions indicates 775 Tg CO_2eq for 2012 (a 4 percent difference).

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. The Administrator considered climate change risks to children as part of the endangerment and cause or contribute findings under CAA section 231(a)(2)(A). This action's discussion of climate change impacts on public health and welfare is found in section IV of this preamble. Specific discussion with regard to children is contained in sections IV.C.1.a of the preamble. A copy of all documents pertaining to the impacts on children's health from climate change have been placed in the public docket for this action.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, we have concluded that this action is not likely to have any adverse energy effects because the endangerment and cause or contribute findings under section 231(a)(2)(A) do not in-and-of themselves impose any new requirements but rather set forth the Administrator's determination that GHG emissions from certain classes of aircraft engines—those used in U.S. covered aircraft—cause or contribute to air pollution that may be reasonably anticipated to endanger public health and welfare.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because this action does not affect the level of protection provided to human health or the environment. The Administrator considered climate change risks to minority, low-income, and indigenous populations as part of these endangerment and cause or contribute findings under CAA section 231(a)(2)(A). This action's discussion of climate change impacts on public health and welfare is found in section IV.C of the preamble. Specific discussion with regard to minority, low-income, and indigenous populations are found in sections IV.C.1.a and IV.C.2.a of this preamble. A copy of all documents pertaining to the impacts on these communities from climate change have been placed in the public docket for this action.

K. Congressional Review Act (CRA)

The EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Determination Under Section 307(d)

Section 307(d)(1)(V) of the CAA provides that the provisions of section 307(d) apply to "such other actions as the Administrator may determine." Pursuant to section 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of section 307(d).

VII. Statutory Provisions and Legal Authority

Statutory authority for this action comes from 42 U.S.C. 7571, 7601 and 7607.

List of Subjects

40 CFR Part 87

Environmental protection, Air pollution control, Aircraft, Aircraft engines.

40 CFR Part 1068

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: July 25, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–18399 Filed 8–12–16; 8:45 am]

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